

# ARKANSAS CODE OF 1987 ANNOTATED



## 2011 SUPPLEMENT VOLUME 28B

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*Prepared by the Editorial Staff of the Publisher*

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**27-49-212. Roadways.**

(a) "Private road or driveway" means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons.

(b) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel.

(c) "Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.

(d) "Street or highway" means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

(e) "Through highway" means every highway or portion thereof at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing it and when stop signs are erected as provided in this act.

**History.** Acts 1937, No. 300, § 12; Pope's Dig., § 6670; Acts 1959, No. 307, § 4; A.S.A. 1947, § 75-412; Acts 2011, No. 780, § 1.

**Amendments.** The 2011 amendment deleted former (e) and redesignated the remaining subsections accordingly.

## **27-49-214. Tires.**

(a) "Pneumatic tire" means every tire in which compressed air is designed to support the load.

(b) "Metal tire" means every tire the surface of which in contact with the highway that is wholly or partly of metal or other hard nonresilient material.

**History.** Acts 1937, No. 300, § 5; Pope's Dig., § 6663; A.S.A. 1947, § 75-405; Acts 2011, No. 780, § 2.

**Amendments.** The 2011 amendment deleted former (b) and redesignated the remaining subsections accordingly.

## **27-49-215. Tractors.**

(a) "Truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load so drawn.

(b) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

**History.** Acts 1937, No. 300, § 3; Pope's Dig., § 6661; A.S.A. 1947, § 75-403; Acts 2011, No. 780, § 3.

**Amendments.** The 2011 amendment deleted (c).

## **27-49-219. Vehicles.**

(a) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.



(b) "Motor vehicles" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.

(c) "Motorcycle" means every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground but excluding a tractor.

(d)(1) "Authorized emergency vehicle" means authorized emergency vehicles, which shall include:

(A) Motor vehicles used by state, county, or city and municipal police agencies, all of which shall be equipped with:

(i) Blue lights; or

(ii) Blue, red, or white rotating or flashing emergency lights;

(B)(i) Motor vehicles used by state, county, city, or municipal fire departments, motor vehicles owned and used by volunteer fire fighters while engaged in official duties, motor vehicles used by emergency medical services personnel licensed by the Department of Health or privately owned fire departments, and ambulances used solely for ambulance purposes that are approved as ambulances in accordance with state and federal highway safety standards, all of which shall be equipped with red rotating or flashing emergency lights.

(ii) Flashing emergency lights shall be used by volunteer fire fighters solely while engaged in the performance of duties as volunteer fire fighters and by emergency medical services personnel solely while engaged in the performance of duties with an ambulance service licensed by the department or an organized rescue squad or team;

(C)(i) Motor vehicles owned by state, county, and municipal agencies whose use is determined by the state agency to be required for dangerous or hazardous services and motor vehicles owned by public service corporations or private individuals whose use is determined by the Commissioner of Motor Vehicles, in accordance with regulations established by the commissioner to prevent abuses thereof, to be for extra hazardous service, may be equipped with amber flashing or rotating emergency or warning lights that shall not qualify them as emergency vehicles, but which shall during hazardous uses display their amber flashing or rotating emergency or warning lights in order that other motorists and the public may be aware of the special or hazardous use of the vehicles and shall exercise caution in approaching the vehicles at all times while the amber flashing or rotating emergency or warning lights are in operation.

(ii) All hazardous service vehicles shall conform to regular traffic signals and speed limits during their operation; and

(D)(i) Motor vehicles utilized as wreckers or tow vehicles permitted or licensed under § 27-50-1203 may be equipped with amber flashing or rotating emergency or warning lights that shall not qualify them as emergency vehicles, but which shall only during hazardous uses display their amber flashing or rotating emergency or

warning lights in order that other motorists and the public may be aware of the special or hazardous use of the wreckers or tow vehicles and exercise caution in approaching the wreckers or tow vehicles at all times while the amber flashing or rotating emergency or warning lights are in operation. Unless otherwise directed by a law enforcement officer, a wrecker or tow vehicle shall conform to regular signals and speed limits during its operation. In addition to amber flashing or rotating emergency or warning lights, wreckers or tow vehicles that respond to highway emergencies may be equipped with red flashing or rotating emergency or warning lights.

(ii) Red flashing or rotating emergency or warning lights on a wrecker or tow vehicle shall be operated only while the wrecker or tow vehicle is stopped on or within ten feet (10') of a public way and engaged in recovery or loading and hooking up an abandoned, an unattended, a disabled, or a wrecked vehicle. A wrecker or tow vehicle shall not operate forward-facing red flashing or rotating emergency or warning lights while underway, except as may be expressly authorized or required by law otherwise.

(2) It shall be unlawful to install, operate, or use any rotating or flashing light on any motor vehicle except as authorized in this subsection.

(e)(1) "School bus" means a motor vehicle designed to carry more than ten (10) passengers:

(A) Owned by a public or a governmental agency or a private school and operated for the transportation of students to or from school or school-sponsored activities; or

(B) Privately owned and operated for compensation for the transportation of students to or from school or school-sponsored activities.

(2) A motor vehicle designed to carry more than twenty-five (25) passengers is exempt from this section if the motor vehicle is:

(A) Owned by a public or a governmental agency or a private school and operated for the transportation of students to or from school-sponsored activities but not used to transport students on any scheduled school bus route; or

(B) Privately owned and operated for compensation under contract to a school district and used for the transportation of students to or from school-sponsored activities.

**History.** Acts 1937, No. 300, § 2; Pope's Dig., § 6660; Acts 1973, No. 155, § 1; A.S.A. 1947, § 75-402; Acts 1993, No.

1010, § 2; 1995, No. 123, § 2; 1995, No. 753, § 1; 2007, No. 999, § 5; 2007, No. 1412, § 3; 2009, No. 689, § 20; 2011, No. 780, § 4.

**Amendments.** The 2011 amendment inserted "lights" following "Blue" in (d)(1)(A)(i).

CHAPTER 50  
PENALTIES AND ENFORCEMENT

SUBCHAPTER.

- 5. TRAFFIC CITATIONS.
- 6. ARREST AND RELEASE.
- 9. CENTRAL DRIVER'S RECORDS FILE.
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SUBCHAPTER 5 — TRAFFIC CITATIONS

SECTION.

27-50-505. Information from owner re-  
garding operation of motor

vehicle ticketed for viola-  
tion.

27-50-505. Information from owner regarding operation of mo-  
tor vehicle ticketed for violation.

(a) As used in this section, unless the context otherwise requires, "police authority" means any municipal, county, or state police enforcement agency.

(b) When the registered owner of a motor vehicle receives notice from any police authority that the motor vehicle has been ticketed for a violation of any state law or municipal ordinance regulating motor vehicle operation or usage, the registered owner shall provide the notifying police authority with such information as he or she has available regarding the operation of the vehicle at the time it was ticketed, within fourteen (14) days of receipt of notice therefor.

(c) Failure or refusal of any registered owner of a motor vehicle to comply with the provisions of this section shall be a misdemeanor. Upon conviction, the person shall be subject to a fine of not less than five dollars (\$5.00) nor more than fifty dollars (\$50.00).

**History.** Acts 1969, No. 80, §§ 1-3; A.S.A. 1947, §§ 75-1047 — 75-1049; Acts 2011, No. 780, § 5.

**Amendments.** The 2011 amendment deleted (a)(1) and redesignated the remaining subdivision accordingly.

SUBCHAPTER 6 — ARREST AND RELEASE

SECTION.

27-50-602. Cases in which person ar-  
rested must be taken im-  
mediately before magis-  
trate.

SECTION.

27-50-603. Release upon promise to ap-  
pear.

27-50-602. Cases in which person arrested must be taken imme-  
diately before magistrate.

Whenever any person is arrested for any violation of this act punishable as a misdemeanor, the arrested person shall be immediately taken before a magistrate or other proper officer within the county in



which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made, in any of the following cases:

- (1) When a person arrested demands an immediate appearance before a magistrate;
- (2) When the person is arrested and charged with an offense under this act causing or contributing to an accident resulting in injury or death to any person;
- (3) When the person is arrested upon a charge of negligent homicide;
- (4) When the person is arrested upon a charge of driving while under the influence of intoxicating liquor or narcotic drugs;
- (5) When the person is arrested upon a charge of failure to stop in the event of an accident causing death, personal injuries, or damage to property; or
- (6) In any other event when the person arrested refuses to give his or her promise to appear in court as provided.

**History.** Acts 1937, No. 300, § 154; Pope's Dig., § 6814; A.S.A. 1947, § 75-1007; Acts 2011, No. 908, § 4.

**Amendments.** The 2011 amendment substituted "his or her promise" for "his written promise" in (6).

### **27-50-603. Release upon promise to appear.**

(a) When a person is arrested for any violation of this act punishable as a misdemeanor and the person is not immediately taken before a magistrate as required, the arresting officer may issue an electronic citation or prepare in duplicate written notice to appear in court containing:

- (1) The name and address of the person;
  - (2) The license number of his or her vehicle, if any;
  - (3) The offense charged; and
  - (4) The time when and place where the person shall appear in court, and if the officer is a bonded officer, he may require the person to post a bail bond and give receipt therefor.
- (b) The time specified to appear must be at least five (5) days after the arrest unless the person arrested shall demand an earlier hearing.
- (c) The place specified to appear shall be before a magistrate:
- (1) Within the township or county in which the offense charged is alleged to have been committed; and
  - (2) Who has jurisdiction of the offense.
- (d)(1) If issued a written citation, the arrested person in order to secure release, as provided in this section, must give his or her written promise so to appear in court by signing in duplicate the written notice prepared by the arresting officer or post a bail bond as may be required by the arresting officer.
- (2) If issued an electronic citation, the arrested person in order to secure release, as provided in this section, acknowledges receipt of the notice to appear in court and gives his or her promise to appear in court by acceptance of the electronic citation.



(3)(A) The original of the notice to appear and of the receipt for bail shall be retained by the officer or electronically transmitted to the court, and the copy of each delivered to the person arrested.

(B) Thereupon, the officer shall forthwith release the person arrested from custody.

(e) An officer violating any of the provisions of this section shall be guilty of misconduct in office and shall be subject to removal from office.

**History.** Acts 1937, No. 300, § 155; Pope's Dig., § 6815; Acts 1961, No. 446, § 1; A.S.A. 1947, § 75-1008; Acts 2011, No. 908, § 5.

**Amendments.** The 2011 amendment inserted "issue an electronic citation or" in the introductory language of (a); inserted

"or her" in (a)(2); inserted "If issued a written citation" in (d)(1); inserted present (d)(2) and redesignated the remaining subdivisions accordingly; and inserted "or electronically transmitted to the court" in present (d)(3)(A).

## SUBCHAPTER 9 — CENTRAL DRIVER'S RECORDS FILE

### SECTION.

27-50-910. Disposition of funds.

### 27-50-910. Disposition of funds.

Moneys collected under the provisions of this subchapter shall be special revenues and deposited into the State Treasury to the credit of the State Highway and Transportation Department Fund for distribution as provided in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq.

**History.** Acts 1977, No. 465, § 8; 1979, No. 1067, § 1; A.S.A. 1947, § 75-1057.7; Acts 2011, No. 780, § 6.

**Amendments.** The 2011 amendment

substituted "Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq." for "Highway Distribution Law of this state."

## SUBCHAPTER 12 — REMOVAL OF UNATTENDED OR ABANDONED VEHICLES

### SECTION.

27-50-1201. Applicability.

27-50-1202. Definitions.

27-50-1203. Arkansas Towing and Recovery Board — Creation.

27-50-1204. Penalties.

27-50-1205. Tagging.

27-50-1206. Notice to storage firm.

### SECTION.

27-50-1207. Removal of vehicles.

27-50-1208. Possessory lien and notice to owners and lienholders.

27-50-1210. Nonjudicial public sale.

27-50-1216. Moving a total-loss vehicle from a storage facility.

**Effective Dates.** Acts 2011, No. 1061, § 8: July 1, 2011. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of

this Act on July 1, 2011 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2011 could work irreparable harm upon

the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being neces-

sary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2011.”

### 27-50-1201. Applicability.

(a) This subchapter applies to a person:

(1) Engaged in the towing or storage of vehicles in the State of Arkansas; and

(2) That is hired to tow or store the vehicle.

(b) This subchapter does not apply to the following tow vehicles and related equipment:

(1) Car carriers capable of carrying five (5) or more vehicles and that have federal Interstate Commerce Commission authority;

(2) Tow vehicles owned by a governmental entity and not used for commercial purposes; and

(3) If in compliance with § 27-35-112, tow vehicles that are:

(A) Registered in another state;

(B) Operating under federal Interstate Commerce Commission authority; and

(C) Not regularly doing business or soliciting business in the State of Arkansas.

**History.** Acts 1993, No. 1000, § 1; 2005, No. 1878, § 3; 2011, No. 1061, § 4.

**Amendments.** The 2011 amendment substituted “applies to a person” for “shall

apply to any person, firm, organization, or other entity” in the introductory language of (a); inserted (a)(2); and rewrote (b)(3).

### 27-50-1202. Definitions.

As used in this subchapter:

(1) “Abandoned vehicle” means a vehicle deemed to be an unattended vehicle as defined in this section:

(A) As to which the owner has overtly manifested some intention not to retake possession; or

(B) That remains unattended, whether in its first-found location or in another location to which it has been removed under this subchapter, for a period of thirty (30) days during which period the owner gives no evidence of an intent to retake possession;

(2) “Consent” means towing, storage, or recovery of a vehicle, which towing, storage, or recovery is done with the permission of the owner or other person in charge of the vehicle;

(3) “Impounded or seized vehicle” means a vehicle subject to impounding or seizure by law enforcement under the Arkansas Code, the Arkansas Rules of Criminal Procedure, a court order, or an ordinance;

(4) “Nonconsent” means towing, storage, or recovery of an unattended vehicle, abandoned vehicle, or impounded or seized vehicle as defined in this section or a disabled or inoperative vehicle for which the

owner preference is waived by the owner or person in charge of the vehicle;

(5) "Owner" means, in the absence of conclusive evidence to the contrary, the person in whose name the vehicle is registered with the Office of Motor Vehicle of the Revenue Division of the Department of Finance and Administration or in whose name the vehicle is registered in another state;

(6) "Owner preference" means the right of the owner, his or her agent, or a competent occupant of a disabled or inoperative vehicle to request some responsible and reasonable person, gratuitous bailee, or bailee for hire of his or her choosing to take charge and care of the vehicle;

(7) "Person" means an individual, partnership, corporation, association, or other entity;

(8) "Public way" means a road, highway, or street over which the public may travel, including the traveled surface and a berm or shoulder of a road, highway, or street;

(9) "Removal" means that a law enforcement officer may request a towing and storage firm that is licensed by the Arkansas Towing and Recovery Board to engage in nonconsent towing of vehicles to remove and store:

(A) An unattended vehicle or abandoned vehicle under this subchapter;

(B) A disabled or inoperative vehicle for which the owner or person in charge of the vehicle has waived his or her right to owner preference as defined in this section;

(C) A vehicle in which the operator was apprehended by law enforcement officers; or

(D) An impounded or seized vehicle;

(10) "Tow vehicle" means a motor vehicle or related equipment subject to registration in the State of Arkansas that is used to tow, recover, upright, transport, or otherwise facilitate the movement of vehicles on public highways;

(11) "Unattended vehicle" means a vehicle that:

(A) Is left on public property without the consent of an authority in charge of the property or on or near a public way without some person, gratuitous bailee, or bailee for hire in possession of the vehicle and that:

(i) Is located within a distance of three feet (3') of the traveled surface of the public way;

(ii) Is located on or near a public way at a distance of three feet (3') or more of the traveled surface of the public way for a period of twenty-four (24) hours or more; or

(iii) Is not located on or near a public way but is left for a period of forty-eight (48) hours or more;

(B) Does not remain in the custody of a responsible person following an accident where the operator has been removed to a hospital or is otherwise unable to make personal arrangements for the vehicle's care;



(C) Was operated to a place of apprehension by law enforcement under police power and the operator was removed from the vehicle and taken into police custody;

(D) Is located upon a public right of way and due to geographic location, traffic density, or climatic conditions is creating an immediate and substantial hazard to the motoring public, as determined by a law enforcement officer; or

(E) Is disabled or inoperative and located on or near a public way or on a public right-of-way, and honoring the owner preference would create an immediate and substantial hazard to the motoring public, as determined by a law enforcement officer, due to:

- (i) Geographic location;
- (ii) Traffic density; or
- (iii) Climatic conditions; and

(12) "Vehicle" means a device by which persons or things may be transported upon a public highway and which is of the type subject to registration in Arkansas.

**History.** Acts 1993, No. 1000, § 2; 1997, No. 381, § 1; 1997, No. 392, § 1; 1999, No. 1279, § 4; 2001, No. 1830, §§ 1, 2; 2007, No. 1053, § 1; 2011, No. 1025, § 1.

**Amendments.** The 2011 amendment substituted "As used in this subchapter" for "For the purposes of this subchapter, unless the context otherwise requires" in the introductory paragraph; in (1), inserted "vehicle" following "abandoned"

and following "unattended"; inserted present (3) and redesignated former (3) through (11) as present (4) through (12); in (4), inserted "or impounded or seized vehicle" and substituted "this section" for "this subchapter"; in (5), substituted "'Owner' means" for "'Owner' of an unattended or abandoned vehicle shall" and deleted "be deemed to be" following "contrary"; deleted the former second sentence of (8); and rewrote (9) and (11).

### 27-50-1203. Arkansas Towing and Recovery Board — Creation.

(a)(1) There is hereby created the Arkansas Towing and Recovery Board consisting of nine (9) members appointed by the Governor and confirmed by the Senate, who shall serve terms of three (3) years.

(2)(A) Four (4) members shall be appointed from the towing industry and shall be licensed by the board to engage in nonconsent towing, with one (1) each of the members being a resident of each of the four (4) congressional districts.

(B) Two (2) members who are permitted to engage in the consent-only business shall be appointed from the state at large.

(C) Two (2) members who are not associated with the towing industry shall be appointed from the state at large.

(D) One (1) member shall be appointed from the insurance industry.

(b) The appointed board members shall be residents of the State of Arkansas at the time of appointment and throughout their terms.

(c)(1) The members shall determine by majority vote of the quorum of the board who shall serve as chair.

(2) The chair shall be elected annually from the membership of the board.



(d)(1) The board shall meet at such times and places that the chair deems necessary, but no meeting shall be held outside the State of Arkansas.

(2) Five (5) of the members of the board shall constitute a quorum for the purpose of transacting business.

(3) All actions of the board shall be by a quorum.

(e)(1) The board shall promulgate rules and regulations to carry out the intent of this subchapter and shall regulate the towing industry, including:

(A) Establishing reasonable licensing, insurance, and equipment requirements for any person engaging in towing and related services for safety purposes under this subchapter;

(B) Establishing reasonable tow truck safety requirements for any tow vehicle as defined in this subchapter;

(C) Establishing a procedure to accept and investigate complaints from a consumer who claims that he or she has been overcharged for nonconsent towing, recovery, or storage fees;

(D) Determining and sanctioning excessive or unnecessary non-consent towing fees, recovery, and storage charged to consumers;

(E) Requiring all entities permitted, licensed, or regulated under this subchapter to provide to the board all documents in response to information requests by the board pursuant to the investigation of consumer complaints or board complaints against the permittee or licensee;

(F) Requiring all entities permitted, licensed, or regulated under this subchapter to provide itemized billing for towing or storage fees that explains how the charges were calculated; and

(G) Requiring all entities permitted, licensed, or regulated under this subchapter to maintain a copy of their current maximum rate schedule posted in a conspicuous place and readily accessible to the public.

(2) The promulgation and adoption of rules and regulations shall in all respects be in the manner provided by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(3) After the promulgation and adoption of rules or regulations, any proposed change to add to, amend, repeal, or change any of the rules or regulations shall not have effect until reviewed and approved by the Subcommittee on Administrative Rules and Regulations of the Legislative Council subsequent to the time that the General Assembly next meets in regular session unless a finding exists that imminent peril to the public health, safety, or welfare requires immediate adoption, amendment, or repeal of the rules or regulations.

(f)(1) The board shall have the authority to levy applicable towing business license fees not to exceed one hundred dollars (\$100) per license, and the board shall have the authority to levy an applicable tow vehicle safety permit fee not to exceed fifty dollars (\$50.00) per tow vehicle safety permit.

(2) Furthermore, the board shall also have the authority to impose late filing fees in addition to the original filing fees in an amount not to exceed the original amount of the license fee or safety permit fee.

(g)(1) The board shall have the authority to employ and discharge any personnel as may be necessary to administer and enforce the provisions of this subchapter and the rules and regulations promulgated hereunder.

(2) The board shall employ investigators to investigate consumer complaints related to overcharging for nonconsent towing, recovery, or storage fees, violations of § 27-50-1101, this subchapter, and violations of the rules promulgated by the board under this subchapter.

(h) The board shall have the authority to obtain office space, furniture, stationery, and other proper supplies and conveniences reasonably necessary to carry out the provisions of this subchapter.

(i) Each member of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(j) The board shall have the authority to establish a maximum amount to be charged by a towing business for each notification to an owner and a lienholder as required by this subchapter.

**History.** Acts 1989, No. 899, § 9; 1993, No. 1000, § 3; 1997, No. 250, § 246; 1997, No. 392, § 2; 1999, No. 1279, § 2; 2005, No. 1878, § 2; 2007, No. 861, §§ 2-4; 2007, No. 1053, § 2; 2011, No. 780, § 8.

**Amendments.** The 2011 amendment inserted "in addition to the original filing fees" in (f)(2).

### **27-50-1204. Penalties.**

(a)(1) The following shall be liable for all reasonable costs of towing, recovery, storage, and other incidental costs related to a removal of a vehicle under this subchapter:

(A) The owner of the vehicle;

(B) The person who left the unattended vehicle or abandoned vehicle before removal; and

(C) An owner or operator who waives the owner preference.

(2) If the vehicle is sold by foreclosure under § 27-50-1209, the owner or operator shall be liable for such costs in excess of the proceeds of the sale of the vehicle.

(b) Any law enforcement agency that without reasonable justification fails to provide information to the towing and storage firm within twenty-four (24) hours as prescribed by this subchapter shall be liable to the towing and storage firm for any accrued storage fees between the expiration of the twenty-four-hour period and such time as the information is provided.

(c) Upon complaint or on its own initiative when the Arkansas Towing and Recovery Board has reason to believe that a law enforcement officer failed to adhere to an owner preference request or otherwise violated this subchapter, the board may investigate the matter and submit its findings to proper law enforcement authorities.

(d) Any person, excluding a law enforcement officer, who is determined by the board after reasonable notice and opportunity for a fair and impartial hearing held in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., to have committed an act that is in violation of this subchapter or any rules and regulations promulgated under this subchapter is subject to civil penalties prescribed by the board, including monetary penalties not to exceed five thousand dollars (\$5,000) or the suspension or revocation of any towing license or permit, or both.

(e) Nothing in this section shall be construed to limit the right to seek judicial review of any determination of the board pursuant to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(f)(1) A penalty assessed by the board shall be paid no later than fifteen (15) days after the conclusion of the appeals process under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2) If not paid timely, a license or permit issued by the board may be suspended until the penalty is paid.

(3)(A) If an entity or individual fails to pay a fine or an installment payment as provided under subdivision (f)(1) of this section, the board may provide written notice to the Office of Motor Vehicle of the Revenue Division of the Department of Finance and Administration of the failure to pay.

(B) The notice of the failure to pay a fine ordered by the board shall contain the following information:

- (i) The name of the entity or individual that is subject to the fine;
- (ii) The vehicle identification number or other identifying information for the vehicle owned by the entity or individual that is the subject of the fine;
- (iii) The date the board imposed the fine;
- (iv) The amount of the fine;
- (v) The date the fine or installment payment became delinquent; and

(vi) The amount of the fine or installment payments that remain delinquent.

(C) Upon receipt of the notice of the failure to pay a fine or installment payment, the Office of Motor Vehicle shall suspend the tow vehicle license plate issued under § 27-14-601(a)(3)(J)(i) and the vehicle's registration.

(D) A suspension under this subdivision (f)(3) for failure to pay a fine ordered by the board shall remain in effect until the Office of Motor Vehicle receives written notice from the board that the fine has been paid.

**History.** Acts 1993, No. 1000, § 10; §§ 3-5; 2011, No. 732, § 1; 2011, No. 2005, No. 1878, § 4; 2005, No. 2211, § 2; 1025, § 2.  
2007, No. 861, §§ 5, 6; 2007, No. 1053, **Amendments.** The 2011 amendment



by No. 732 inserted "issued by the Arkansas Towing and Recovery Board" in (f)(2); and added (f)(3).

The 2011 amendment by No. 1025, in (a)(1), substituted "following" for "owner of a vehicle and the person who left the

vehicle unattended or abandoned or any owner or operator waiving an owner's preference" and added "of a vehicle under this subchapter"; and added (a)(1)(A) through (C).

### **27-50-1205. Tagging.**

Any law enforcement officer or code enforcement officer as defined by municipal ordinance observing an unattended vehicle, abandoned vehicle, disabled vehicle, or inoperative vehicle on or near a public way shall:

(1)(A) Order immediate removal of the vehicle if it:

(i) Is located within three feet (3') of the traveled surface of a public way; or

(ii) Appears to create an immediate and substantial hazard to the public; and

(B) Log the removal order accordingly; or

(2)(A) Tag the vehicle if it is located at a distance of three feet (3') or more from the traveled surface of a public way by securely affixing a colored form or other easily observable sticker.

(B) The tag or sticker used under subdivision (2) of this section shall show:

(i) The date and time of tagging;

(ii) That the vehicle will be removed under this subchapter unless the vehicle is removed within twenty-four (24) hours;

(iii) The location and telephone number where more information may be obtained; and

(iv) The identification of the officer.

**History.** Acts 1993, No. 1000, § 5; 1999, No. 1279, § 3; 2007, No. 100, § 1; 2007, No. 1053, § 6; 2011, No. 1025, § 3.

**Amendments.** The 2011 amendment substituted "an unattended vehicle, abandoned vehicle, disabled vehicle, or inoperative vehicle on or near a public way" for "a vehicle on or near a public way which appears to be unattended or abandoned"

in the introductory paragraph; redesignated (2) as (2)(A) and (B) and (2)(A) through (D) as (2)(B)(1) through (4); substituted "the vehicle" for "any unattended, abandoned, disabled, or inoperative vehicle" in (1)(A) and (2)(A); and inserted "used under subdivision (a)(2) of this section" in (2)(B).

### **27-50-1206. Notice to storage firm.**

(a)(1) For all requests to a licensed towing and storage firm to remove and store an unattended vehicle, abandoned vehicle, or impounded or seized vehicle, the law enforcement agency shall issue a written order that states the removal is for nonconsent services and shall provide information supplied from the records of the Office of Motor Vehicle of the Revenue Division of the Department of Finance and Administration, Arkansas Crime Information Center records, or the motor vehicle records of another state indicating the name and address of the last registered owner, the name and address of the holder



of any recorded lien on the vehicle, and the vehicle identification or serial number of the vehicle.

(2) If there is evidence in the vehicle indicating that the vehicle is registered in another state, the information shall be supplied from the motor vehicle records of that state.

(3)(A) If a law enforcement officer or other official issues a hold against the release of the vehicle, the law enforcement officer's order to remove and store the vehicle shall include a written explanation for the issuance of the hold.

(B) When the hold on the vehicle is released, the law enforcement officer or other official who issued the hold shall provide written notice of the release to the towing and storage firm.

(b)(1) In the event that readily available records fail to disclose the name of the owner or any lienholder of record, the law enforcement officer or his or her agency shall notify in writing the towing and storage firm that after receiving the notice the towing and storage firm is required to perform a good faith search to locate documents or other evidence of ownership and lienholder information on or within the unattended vehicle, abandoned vehicle, or impounded or seized vehicle.

(2) For purposes of this subsection, a "good faith search" means that the towing and storage firm checks the unattended vehicle, abandoned vehicle, or impounded or seized vehicle for any type of license plate, license plate record, temporary permit, inspection sticker, decal, or other evidence that may indicate a possible state of registration and title.

(3) The towing and storage firm shall provide in writing to the law enforcement officer or agency the results of the search and, if appropriate, certify that a physical search of the unattended vehicle, abandoned vehicle, or impounded or seized vehicle disclosed that no ownership documents were found and that a good faith search was conducted.

(4) If the vehicle is subject to a hold limiting access to the vehicle, the law enforcement agency issuing the hold shall perform a good faith search to locate documents or other evidence of ownership and lienholder information to the extent required to preserve limited access to the vehicle.

(c)(1) Within not more than twenty-four (24) hours from the order to remove, the officer involved or his or her agency shall contact the towing and storage firm and advise the firm of any unusual circumstances causing the delay of the required information that was not available to the officer at the time the order to remove was issued.

(2) The officer or agency shall provide the delayed information immediately upon receipt.

(d) When a vehicle is removed under this subchapter by law enforcement and is subject to impoundment or seizure pursuant to police power or any lawful court order, the law enforcement officer shall provide to the towing and storage firm a written statement setting forth the conditions of release of the vehicle.

**History.** Acts 1993, No. 1000, § 6; 1997, No. 841, § 2; 2001, No. 1830, § 3; 2005, No. 1878, § 5; 2007, No. 1053, § 7; 2011, No. 1025, § 4.

**Amendments.** The 2011 amendment rewrote (a)(1); in (b)(1), substituted “the towing and storage firm is required to” for “the firm shall” preceding “perform a good faith,” and “unattended vehicle, aban-

doned vehicle, or impounded or seized vehicle” for “unattended or abandoned vehicle”; substituted “vehicle, abandoned vehicle, or impounded or seized vehicle” for “or abandoned property” in (b)(2); substituted “unattended vehicle, abandoned vehicle, or impounded or seized vehicle” for “unattended or abandoned property” in (b)(3); and added (b)(4).

## **27-50-1207. Removal of vehicles.**

(a)(1) A law enforcement agency that directs the removal of an unattended vehicle, abandoned vehicle, or impounded or seized vehicle shall adopt a written vehicle removal policy, the provisions of which shall not be in conflict with this subchapter.

(2)(A) Any vehicle removal policy shall provide that owner preference as defined by this subchapter shall be offered to the owner, to his or her agent, or to any competent occupant of any disabled or inoperative vehicle except in those instances of exigent circumstances or where the immediate clearing of a public thoroughfare mandates an expedited towing service.

(B) In those instances where exigent circumstances or where the immediate clearing of a public thoroughfare mandates an expedited towing service, owner preference shall be honored when the owner has requested a towing service that is located in the particular towing zone where services are to be rendered and is ready to promptly respond to the request for services.

(C)(i) If a law enforcement officer fails to provide an owner of a vehicle with an owner preference as required under this section, then the owner may file a complaint with the law enforcement agency that employs the law enforcement officer or the Arkansas Towing and Recovery Board, or both.

(ii) Nothing in this subsection precludes a person who has been denied the right of owner preference from seeking any other legal or equitable remedy.

(3) Nothing in this section shall be construed to authorize the towing of a vehicle in violation of other provisions of this subchapter.

(b) All law enforcement officers shall comply with the policies prescribed by their agencies as to the removal of an unattended vehicle, abandoned vehicle, or impounded or seized vehicle as defined by this subchapter.

(c) No law enforcement officer shall:

(1) Suggest or recommend any particular towing and storage firm to the owner, his or her agent, or any competent occupant of any disabled or inoperative vehicle; or

(2) Accept gifts or special consideration from the owner of a towing business or anyone acting on the owner's behalf in relation to removal of vehicles as provided by this subchapter.

(d) Upon request, any law enforcement officer or his or her agency who orders a removal pursuant to this subchapter shall provide to the



owner, to his or her agent, or to any competent occupant of the removed vehicle the name, location, and telephone number of the towing and storage firm requested to remove and store the vehicle.

(e)(1) Should the owner or lienholder of a vehicle removed under this subchapter consider that the removal of the vehicle was not legally justified or properly subject to a law enforcement hold, the owner or lienholder may within thirty (30) days after removal or within thirty (30) days after the receipt of notification of a law enforcement hold from the towing and storage firm, whichever is later, seek a review to determine whether the unattended vehicle, abandoned vehicle, disabled vehicle, or inoperative vehicle was wrongfully removed or withheld from the owner through the following procedures:

(A) In the case of a vehicle removed by or at the direction of a state agency, by filing a petition with the Arkansas State Claims Commission;

(B) In the case of a vehicle removed by or at the direction of a county or city agency and when the county or city has established an administrative review process, by filing a petition according to the established administrative review process; and

(C) In all other cases, including when the county or city has failed to establish an administrative review process, by filing a petition in the circuit court in the county where the unattended vehicle or abandoned vehicle is stored.

(2) In the case of a final decision reached through a county or city administrative review, the owner or lienholder may appeal an adverse ruling to the circuit court in the county where the unattended vehicle or abandoned vehicle is stored.

(3) The petition shall name the state agency ordering the tow as a respondent and, when filed in circuit court, shall also name the towing company among the respondents if the towing company still possesses the vehicle. In the case of removal originated by an agency of a political subdivision of the state, the petition shall name the county, city, or town as a respondent.

(4) If the vehicle, its contents, or both are subject to impoundment or seizure by law enforcement under the Arkansas Rules of Criminal Procedure or a court order, the procedure for return or restoration of the impounded or seized vehicle and its contents shall be governed exclusively by Rule 15 of the Arkansas Rules of Criminal Procedure to the extent applicable.

(f)(1) Upon the filing of the petition, the owner or lienholder may have the unattended or abandoned vehicle and contents released upon posting with the commission, with the court, or with the city or county clerk or other person designated by a political subdivision, as the case may be, a cash or surety bond equal to the amount of the charges for the towing and storage to ensure the payment of such charges in the event that he or she does not prevail.

(2)(A) Upon the posting of the bond and the payment of the applicable fees, the administrative decision maker, commission, or court,

as the case may be, shall issue an order notifying the towing company and the respondent agency of the posting of the bond.

(B) Upon service of receipt of the order, the towing company shall release the stored property.

(3) At the time of release, after reasonable inspection, the owner or the lienholder shall give a receipt to the towing and storage firm reciting any claim for known loss or damage to the unattended or abandoned property or the contents thereof.

(g) Upon determining the respective rights of the parties, the final order of the administrative decision maker, commission, or court, as the case may be, shall provide for immediate payment in full of the reasonable recovery, towing, and storage fees by the owner or lienholder of the unattended or abandoned property or by the respective law enforcement agency.

(h) In cases where the owner or lienholder has posted a cash or surety bond to obtain immediate release and the owner or lienholder is found to be responsible for reasonable recovery, towing, and storage fees, the administrative decision maker, commission, or court, as the case may be, shall declare the bond to be forfeited, with the amount paid to the towing and storage firm to cover reasonable recovery, towing, and storage fees.

(i) Nothing in this section shall be construed to waive the sovereign immunity of the State of Arkansas nor any immunity granted to its political subdivisions.

(j) This section shall not be construed to defeat a lien held by a towing company under § 27-50-1208.

**History.** Acts 1993, No. 1000, § 4; 1995, No. 815, § 1; 1997, No. 392, § 3; 2001, No. 1830, § 4; 2005, No. 1878, § 6; 2007, No. 1053, §§ 8–10; 2011, No. 995, § 1; 2011, No. 1025, §§ 5–8.

**Amendments.** The 2011 amendment by No. 995 substituted “of exigent circumstances” for “where an emergency exists” in (a)(2)(A); inserted present (a)(2)(B) and redesignated former (a)(2)(B) as (a)(2)(C); and substituted “as required under this

section” for “in a nonemergency situation” in (a)(2)(C)(i).

The 2011 amendment by No. 1025 substituted “unattended vehicle, abandoned vehicle, or impounded or seized vehicle” for “unattended or abandoned vehicle” in (a)(1) and (b); substituted “unattended vehicle, abandoned vehicle, disabled vehicle or inoperative vehicle” for “unattended or abandoned property” in (e)(1); rewrote (e)(4); and added (j).

## **27-50-1208. Possessory lien and notice to owners and lienholders.**

(a)(1) The towing and storage firm shall have a first priority possessory lien on the vehicle and its contents for all reasonable charges for towing, recovery, and storage for which the owner is liable.

(2)(A) A possessory lien under this section attaches to not only the vehicle and its contents but also any trailer attached to the vehicle at the time it is towed and any contents of such trailer including, but not limited to, other vehicles or boats.

(B) A lien under this section shall not extend to the following items, without limitation:



- (i) Personal or legal documents;
- (ii) Medications;
- (iii) Child-restraint seating;
- (iv) Wallets or purses and the contents of such;
- (v) Prescription eyeglasses;
- (vi) Prosthetics;
- (vii) Cell phones;
- (viii) Photographs; and
- (ix) Books.

(C) The items described in subdivision (a)(2)(B) of this section shall be released without charge by the towing and storage firm to the owner or operator of the motor vehicle or his or her duly authorized representative.

(b) The lien shall be perfected by:

(1) Maintaining possession;

(2) Mailing notice to the owner or owners and lienholders as shown on the data provided by the law enforcement agency involved as prescribed by this subchapter; or

(3) In the case of a vehicle removed pursuant to § 27-50-1101, giving notice to the last known registered owner or owners and lienholders as provided from the records of the:

(A) Office of Motor Vehicle of the Department and Finance and Administration;

(B) Arkansas Crime Information Center; or

(C) If known, motor vehicle records of any other state where the vehicle's registration indicates the name and address of the last registered owner and the name and address of the holder of any recorded lien, if any, on the vehicle.

(c)(1) The notice shall be mandatory and by certified mail, return receipt requested.

(2) The notice shall be posted not sooner than two (2) business days but within eight (8) business days after the date that the towing and storage firm receives the vehicle.

(d)(1) If within forty-eight (48) hours the ownership and lienholder information has not been received from the law enforcement agency requesting the removal of a vehicle pursuant to this subchapter, the towing and storage firm shall obtain information concerning the last known registered owner or owners and lienholder or lienholders as provided from the records of the:

(A) Office of Motor Vehicle;

(B) Arkansas Crime Information Center; or

(C) If known, motor vehicle records of any other state where the vehicle's registration indicates the name and address of the last registered owner and the name and address of the holder of any recorded lien, if any, on the vehicle.

(2)(A) For the purpose of notices required by this section, if the data records of the Office of Motor Vehicle or the office of motor vehicles for the state where the vehicle is registered, if known, do not contain any

information as to the last known registered owner or owners and lienholder or lienholders, notice by publication one (1) time in one (1) newspaper of general circulation in the county where the vehicle was found unattended, abandoned, or improperly parked is sufficient notice under this section.

(B) The notice by publication may contain multiple listings of vehicles, shall be published within the time requirements prescribed for notice by certified mail, and shall have the same contents required for a notice by certified mail.

(e)(1) The notice shall contain the following information:

(A) The year, make, model, and vehicle identification number of the vehicle towed;

(B) The name, address, and telephone number of the storage facility;

(C) That the vehicle is in the possession of that towing and storage firm under police order, describing the general circumstances of any law enforcement or other official hold on the vehicle;

(D) That towing, storage, and administrative costs are accruing as a legal liability of the owner;

(E) That the towing and storage firm claims a first priority possessory lien on the vehicle and its contents for all such charges;

(F) That unless claimed within forty-five (45) days, the vehicle and its contents will be dismantled, destroyed, or sold at public sale to the highest bidder;

(G) That the failure to exercise the right to reclaim the vehicle and its contents within the time prescribed by this section constitutes a waiver by the owner and lienholder of all right, title, and interest in the vehicle and its contents and constitutes consent to the sale, dismantling, or destruction of the vehicle and its contents;

(H) That the owner or lienholder may retake possession at any time during business hours by appearing, proving ownership, and releasing the law enforcement or other official hold, if any, and by paying all charges or by other written arrangement between the owner or lienholder and the towing and storage firm;

(I) That should the owner consider that the original taking was not legally justified, he or she has a right for thirty (30) days to contest the original taking as described by § 27-50-1207; and

(J) That the owner of the vehicle or operator or his or her authorized representative may recover without charge any item described in subdivision (a)(2)(B) of this section by providing within forty-five (45) days to the towing and storage firm proof that the claimant is the registered owner of the vehicle or has been authorized by the registered owner of the vehicle to take possession of the items.

(2) A notice to an owner of a vehicle deemed abandoned on the premises of an automobile repair facility under § 27-50-1101 shall also advise that the automobile repair person holds an absolute lien on the vehicle under § 18-45-201 et seq.

(f) Nothing in this section is to preclude the owner, lienholder, or agent from making alternative arrangements within the two-day to

eight-day period with the towing and storage firm, waiving his or her rights to the notice requirement.

(g) When any vehicle reclaimed from the towing and storage firm by a lienholder contains contents not subject to the lienholder's interest, the lienholder shall be accountable to the owner of the contents in the same manner as the lienholder would in any other case of repossession of a vehicle, and the towing and recovery firm releasing the vehicle and its contents shall be relieved from all responsibility for the contents.

(h)(1) A towing and storage firm that in good faith follows the procedures of this subchapter or the provisions of § 27-50-1101 shall not be subject to claims of unlawful detainer or conversion for vehicles or their contents for maintaining property pursuant to the possessory lien as provided by this subchapter.

(2) A challenge to the removal and holding of an unattended vehicle, abandoned vehicle, or impounded or seized vehicle as provided by this subchapter shall be controlled exclusively by the provisions of § 27-50-1207.

(3) This section shall not be construed to limit liability of the towing and storage firm for any other act or omission otherwise actionable under statutory or common law.

**History.** Acts 1993, No. 1000, § 7; 1997, No. 392, § 4; 1997, No. 841, § 3; 1999, No. 1279, § 5; 2001, No. 1830, § 5; 2005, No. 1878, § 7; 2005, No. 2211, § 3; 2007, No. 506, §§ 1, 2; 2007, No. 861, §§ 7, 8; 2007, No. 1053, § 11; 2009, No. 483, § 4; 2011, No. 1025, § 9.

**Amendments.** The 2011 amendment substituted "unattended vehicle, abandoned vehicle, or impounded or seized vehicle" for "unattended or abandoned vehicle" in (h)(2); and substituted "This section shall not be" for "Nothing in this section shall be" in (h)(3).

## **27-50-1210. Nonjudicial public sale.**

(a) After complying with the requirements of foreclosure of liens provided by this subchapter, ownership of the vehicle and its contents shall thereupon vest in the purchaser free of all liens of any nature. Should the nonjudicial public sale produce more funds than the sum of all charges, including the costs of the sale and including a reasonable charge for processing the paperwork, the excess shall be paid as follows:

(1)(A) If the vehicle was removed to an impound lot at the request of a law enforcement agency as authorized by this subchapter, the excess shall be maintained for a period of one (1) year by the entity that operates the impound lot.

(B) If the excess is not claimed during this period by the person legally entitled thereto, the moneys shall be paid to the entity operating the impound lot; or

(2)(A) If the vehicle was removed to a private impound lot under § 27-50-1101, the excess shall be paid to the county clerk to the account of the person legally entitled to the excess.

(B) The Unclaimed Property Act, § 18-28-201 et seq., shall apply to any unclaimed funds or excess moneys that have been paid to the county clerk.



(b) Should the sale produce the same or less than the sum of all charges:

(1) At the election of the possessory lienholder, the sale of the vehicle may be cancelled and ownership of the vehicle and its contents shall thereupon vest in the possessory lienholder as purchaser free of all liens of any nature; and

(2) The possessory lienholder shall have a valid claim against the owner for the full amount of the charges, including the costs of the sale and including a reasonable charge for processing the paperwork, less the sale price of the vehicle and its contents.

(c)(1) Upon presentation of documentation to the Office of Motor Vehicle of the Department of Finance and Administration to the effect that the sale procedure provided in this subsection has been complied with protecting the rights of the owner or lienholder, the purchaser of the vehicle shall be entitled to receive a new title to the vehicle upon meeting other applicable administrative requirements of title and registration laws.

(2) The towing and storage firm shall execute an affidavit stating that the vehicle has been towed and stored as an unattended or abandoned vehicle and that notice has been given as required in this subchapter to the registered owners and all lienholders of record.

(3) The affidavit shall describe the vehicle by make, year, model, and vehicle identification number.

**History.** Acts 1993, No. 1000, § 9; 1997, No. 841, § 4; 2001, No. 1820, § 1; 2001, No. 1830, § 7; 2005, No. 1878, § 9; 2005, No. 2211, § 5; 2007, No. 1053, § 13; 2011, No. 872, § 1.

**Amendments.** The 2011 amendment substituted “one (1) year” for “three (3) years” in (a)(1)(A).

### **27-50-1216. Moving a total-loss vehicle from a storage facility.**

(a) As used in this section, “storage facility” means a facility where a wrecked or inoperable vehicle is stored that charges storage fees to a vehicle owner as a result of the claim from the wrecked or inoperable vehicle.

(b)(1)(A) If an insurance company determines that a vehicle is a total loss claim, the insurance company may authorize its agent to move the vehicle to a location of its choosing without:

- (i) The approval of the storage facility; and
- (ii) A release document from the owner.

(B) Instead of a release document, the insurance company shall obtain a verbal release from the vehicle owner to move the total loss vehicle as provided under this section and document the verbal release in the claim file.

(2)(A) To authorize the moving of the vehicle, the insurance company shall submit notice by regular mail, hand-delivery, facsimile, or electronic transmission to the storage facility on company letterhead of the intent to move the vehicle.

(B) The notice shall include:



- (i) A description of the vehicle, including its identification number;
- (ii) The identification of the agent who is to move the vehicle;
- (iii) The date the owner of the vehicle authorized release of the vehicle to the insurance company; and
- (iv) A statement that the insurance company will indemnify and hold harmless the storage facility for all liability and costs it incurs defending itself in any civil or criminal claim arising from moving the vehicle without a release document from the owner.

(C) The owner and any lienholder of the vehicle shall receive a copy of the notice by regular mail.

(c) The storage facility shall make the vehicle available for immediate release and removal during regular business hours of the storage facility upon receipt of:

- (1) The letter described under subdivision (b)(2) of this section;
- (2) The release of any law enforcement or other official hold; and
- (3) Settlement of all fees incurred up to and including the date of removal.

(d)(1) If an insurance company or its agent moves a vehicle as provided under this section, the insurance company shall indemnify and hold harmless the storage facility for liability and all expenses associated with civil or criminal claims arising from moving the vehicle without a release document from the owner.

(2) In any action in which a storage facility prevails against an insurance company for indemnification under this subsection, in addition to any damages suffered, the storage facility shall be awarded attorney's fees and costs incurred.

(e) This section shall not be construed to restore or grant any right, title, or interest in the vehicle or its contents as may have been waived under § 27-50-1209(a).

**History.** Acts 2011, No. 1206, § 1.

## CHAPTER 51

### OPERATION OF VEHICLES — RULES OF THE ROAD

#### SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. SPEED LIMITS.
- 14. MISCELLANEOUS RULES.
- 15. PAUL'S LAW: TO PROHIBIT DRIVERS OF MOTOR VEHICLES FROM USING HANDHELD WIRELESS TELEPHONES TO ENGAGE IN TEXT MESSAGING.
- 16. FEWER DISTRACTIONS MEAN SAFER DRIVING ACT.

#### SUBCHAPTER 1 — GENERAL PROVISIONS

#### SECTION.

- 27-51-102. Penalties generally — Disposition of fines.

**27-51-102. Penalties generally — Disposition of fines.**

(a) Any person violating the provisions of this act shall, except as otherwise provided in this act, upon conviction be fined as provided by the provisions of this act.

(b)(1) Any offender who shall have been found guilty of any violation of any section of this act and fined and who shall within six (6) months thereafter be convicted of a second violation of such section may be fined in a sum not exceeding double the penalty provided for in this act for a first violation. In addition thereto, he or she may have his or her certificate or license issued by the Director of the Department of Finance and Administration revoked for a period not exceeding sixty (60) days.

(2) For a third or subsequent violation of a section within six (6) months after the date of such violation, the certificate or license may in addition to the fine provided for the second offense be revoked for a period not exceeding six (6) months.

(c) Any person whose license shall have been revoked for a violation of any of the provisions of this act and who shall drive or operate a motor vehicle within the State of Arkansas during the period for which his or her license shall have been revoked, or any person who having once been convicted of a failure to comply with the provisions requiring the registration by chauffeurs shall fail or refuse to comply with these provisions shall be deemed guilty of a misdemeanor and upon conviction may be fined in a sum not to exceed two hundred dollars (\$200) or imprisoned in the county jail for a period not exceeding thirty (30) days, or both, at the discretion of the court.

(d) All fines imposed for the violation of any of the provisions of this act shall be collected and disbursed under § 16-13-709.

**History.** Acts 1911, No. 134, § 19, p. 94; C. & M. Dig., § 7435; Pope's Dig., § 6647; A.S.A. 1947, § 75-663; Acts 2011, No. 1218, § 14.

substituted "collected and disbursed under § 16-13-709" for "paid into the general free school fund in each county where the offense is committed" in (d); and deleted former (d)(2).

**Amendments.** The 2011 amendment

**SUBCHAPTER 2 — SPEED LIMITS****SECTION.**

27-51-215. [Repealed.]

**27-51-215. [Repealed.]**

**Publisher's Notes.** This section, concerning Arkansas Primary Highway Network study, was repealed by Acts 2011,

No. 780, § 9. The section was derived from Acts 2007, No. 242, § 1.

SUBCHAPTER 14 — MISCELLANEOUS RULES

SECTION.  
27-51-1403. [Repealed.]

27-51-1403. [Repealed.]

**Publisher’s Notes.** This section, concerning driving on mountain highways, was repealed by Acts 2011, No. 780, § 10.

The section was derived from Acts 1937, No. 300, § 96; Pope’s Dig., § 6753; A.S.A. 1947, § 75-653.

SUBCHAPTER 15 — PAUL’S LAW: TO PROHIBIT DRIVERS OF MOTOR VEHICLES FROM USING HANDHELD WIRELESS TELEPHONES TO ENGAGE IN TEXT MESSAGING

SECTION.  
27-51-1504. Use of a handheld wireless telephone when driving.

27-51-1504. Use of a handheld wireless telephone when driving.

- (a) Except as otherwise provided in subsection (b) of this section, a driver of a motor vehicle shall not use a handheld wireless telephone for wireless interactive communication while operating a motor vehicle.
- (b)(1) A driver of a motor vehicle may use a handheld wireless telephone for wireless interactive communication in emergencies.
- (2) A person performing his or her official duties as a certified law enforcement officer, firefighter, ambulance driver, or emergency medical technician is exempt from the requirements of this section.

**History.** Acts 2009, No. 181, § 1.

**Publisher’s Notes.** This section is being set out to reflect a correction to the 2009 supplement.

SUBCHAPTER 16 — FEWER DISTRACTIONS MEAN SAFER DRIVING ACT

SECTION.  
27-51-1602. Definitions. [Effective October 1, 2011.]  
27-51-1605. Enforcement. [Effective October 1, 2011.]  
27-51-1606. Preemption. [Effective October 1, 2011.]  
27-51-1608. Applicability. [Repealed effective October 1, 2011.]

SECTION.  
27-51-1609. Restrictions in school zones. [Effective October 1, 2011.]  
27-51-1610. Restrictions in highway work zones. [Effective October 1, 2011.]

**Effective Dates.** Acts 2011, No. 37, § 6: applies to all violations committed on and after Oct. 1, 2011.



**27-51-1602. Definitions. [Effective October 1, 2011.]**

As used in this subchapter:

(1) "Emergency purpose" means the reason for contacting any of the following to report an emergency:

- (A) Law enforcement personnel;
- (B) Fire department personnel;
- (C) Public safety personnel;
- (D) Emergency medical personnel; or
- (E) A 911 public safety communications center;

(2)(A) "Handheld wireless telephone" means a wireless interactive communication device with which a user engages in wireless interactive communication using at least one (1) hand.

(B) "Handheld wireless telephone" does not include a:

- (i) Hands-free wireless telephone or device;
  - (ii) Citizens band radio;
  - (iii) Citizens band radio hybrid; or
  - (iv) Global positioning or navigation device or system;
- (3)(A) "Hands-free wireless telephone or device" means a wireless telephone or other wireless communication device that allows a user to engage in wireless interactive communication without the use of either hand with:

- (i) An internal feature or function; or
- (ii) An attachment or additional device.

(B) A hands-free wireless telephone or device may be a permanent or temporary part of the wireless telephone or other wireless communication device.

(C) A hands-free wireless telephone or device may require the use of either hand to activate, deactivate, or initiate a function of the wireless telephone or other communication device;

(4) "Highway work zone" means any area upon or adjacent to a highway, road, or street of this state where construction, reconstruction, maintenance, or any other type of work is being performed or is in progress;

(5) "Highway worker" means an employee of any of the following who is present in a highway work zone:

- (A) The Arkansas State Highway and Transportation Department;
- (B) A county;
- (C) A municipality; or

(D) A contractor or subcontractor of the State Highway Commission or a county or municipality that is performing duties related to the highway work zone;

(6) "Wireless interactive communication" means talking, typing, emailing, or accessing information on the Internet with a wireless telephone; and

(7)(A) "Wireless telephone" means a wireless interactive communication device.

(B) "Wireless telephone" includes a handheld wireless telephone and a hands-free wireless telephone or device.

**History.** Acts 2009, No. 197, § 1; 2009, No. 247, § 1; 2011, No. 37, § 1.

**Publisher's Notes.** For text of section effective until October 1, 2011, see the bound volume.

**Amendments.** The 2011 amendment substituted "wireless interactive" for "a call or text-based" in (2)(A) and in the

introductory language of (3)(A); added (2)(B)(iv); inserted present (4) and (5) and redesignated the remaining subdivisions accordingly; and deleted "text messaging" following "typing" in (6).

**Effective Dates.** Acts 2011, No. 37, § 6: applies to all violations committed on and after Oct. 1, 2011.

### **27-51-1605. Enforcement. [Effective October 1, 2011.]**

A driver of a motor vehicle is not to be stopped or detained solely to determine compliance with this subchapter.

**History.** Acts 2009, No. 197, § 1; 2009, No. 247, § 1; 2011, No. 37, § 2.

**Publisher's Notes.** For text of section effective until October 1, 2011, see the bound volume.

**Amendments.** The 2011 amendment substituted "subchapter" for "section."

**Effective Dates.** Acts 2011, No. 37, § 6: applies to all violations committed on and after Oct. 1, 2011.

### **27-51-1606. Preemption. [Effective October 1, 2011.]**

This subchapter supersedes and preempts all county or municipal ordinances regarding wireless telephone use by drivers of motor vehicles.

**History.** Acts 2009, No. 197, § 1; 2009, No. 247, § 1; 2011, No. 37, § 3.

**Publisher's Notes.** For text of section effective until October 1, 2011, see the bound volume.

**Amendments.** The 2011 amendment

substituted "subchapter" for "section" and "drivers of motor vehicles" for "persons under twenty-one (21) years of age."

**Effective Dates.** Acts 2011, No. 37, § 6: applies to all violations committed on and after Oct. 1, 2011.

### **27-51-1608. Applicability. [Repealed effective October 1, 2011.]**

**Publisher's Notes.** This section is repealed by Acts 2011, No. 37, § 4, effective October 1, 2011. This section, dealing with

applicability, is derived from Acts 2009, No. 197, § 1, and Acts 2009, No. 247, § 1.

### **27-51-1609. Restrictions in school zones. [Effective October 1, 2011.]**

(a) Except as provided under subsection (b) of this section, a driver of a motor vehicle shall not use a handheld wireless telephone while operating a motor vehicle when passing a school building or school zone during school hours when children are present and outside the building.

(b) A driver of a motor vehicle who is passing a school building or school zone during school hours when children are present and outside the building may use a handheld wireless telephone while operating a motor vehicle for an emergency purpose.

(c) This section does not apply to law enforcement officers.

**History.** Acts 2011, No. 37, § 5.

§ 6: applies to all violations committed on

**Effective Dates.** Acts 2011, No. 37, and after Oct. 1, 2011.

**27-51-1610. Restrictions in highway work zones. [Effective October 1, 2011.]**

(a) Except as provided under subsection (b) of this section, the driver of a motor vehicle shall not use a handheld wireless telephone while operating a motor vehicle in a highway work zone when a highway worker is present.

(b) The driver of a motor vehicle who is in a highway work zone when a highway worker is present may use a handheld wireless telephone while operating a motor vehicle for an emergency purpose.

(c) This section does not apply to law enforcement officers.

**History.** Acts 2011, No. 37, § 5.

§ 6: applies to all violations committed on

**Effective Dates.** Acts 2011, No. 37, and after Oct. 1, 2011.

***SUBTITLE 5. HIGHWAYS, ROADS, AND STREETS***

**CHAPTER 64**

**GENERAL PROVISIONS**

**SUBCHAPTER.**

2. ARKANSAS HIGHWAY FINANCING ACT OF 1999.

4. ARKANSAS INTERSTATE HIGHWAY FINANCING ACT OF 2007.

5. ARKANSAS HIGHWAY FINANCING ACT OF 2011.

**SUBCHAPTER 2 — ARKANSAS HIGHWAY FINANCING ACT OF 1999**

**SECTION.**

27-64-203. Definitions.

27-64-206. Election.

**SECTION.**

27-64-211. Sources of repayment.

**27-64-203. Definitions.**

The following terms, as used in this subchapter, shall have the meanings set forth in this section:

(1) “Act” means this Arkansas Highway Financing Act of 1999;

(2) “Bonds” means the “State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds” or “GARVEE bonds”, as authorized in this subchapter;

(3) “Commission” means the State Highway Commission, created and existing pursuant to Arkansas Constitution, Amendment 42;

(4) “Debt service” means all amounts required for the payment of principal, interest on, and premium, if any, due with respect to the bonds in any fiscal year along with all associated costs, including the fees and costs of paying agents and trustees, remarketing agent fees, credit enhancement costs, and other amounts necessary in connection with the bonds;



(5) “Designated revenues” means:

(A) That portion designated by the commission of funds received or to be received from the federal government of the United States as federal highway assistance funding allocated to the state designated as federal highway interstate maintenance funds, and, if needed, that portion of national highway system funds authorized by State Highway Commission Minute Order 98-214 adopted September 22, 1998; and

(B) Revenues derived from the increase in taxes levied on distillate special fuels pursuant to § 26-56-201 and transferred to the State Highway and Transportation Department Fund pursuant to § 27-70-207(d) in accordance with § 26-56-201 and § 26-55-1006; and

(6) “Highway improvements” or “highway improvement projects” means restoration and improvements to all of the interstate highway systems within the state, including roadways, bridges, or right-of-way under the jurisdiction of the commission and shall also include the acquisition, construction, reconstruction, and renovation of such interstate system and facilities appurtenant or pertaining thereto.

**History.** Acts 1999, No. 1027, § 2; substituted “§ 27-70-207(d)” for “§ 27-70-207(c)” in (5)(B).  
2011, No. 752, § 3.

**Amendments.** The 2011 amendment

## **27-64-206. Election.**

(a) Bonds shall not be issued under this subchapter unless the issuance of bonds has been approved by a majority of the qualified electors of the state voting on the question at a statewide special election called by proclamation of the Governor in accordance with § 7-11-201 et seq.

(b)(1)(A) Notice of such election shall be published by the Secretary of State in a newspaper of general circulation in the state at least thirty (30) days prior to such election.

(B) Notice thereof shall be mailed to each county board of election commissioners and the sheriff of each county at least sixty (60) days prior to such election.

(2)(A) The notice of election shall state that the election is to be held for the purpose of submitting to the people the following proposition in substantially the form set forth herein:

Authorizing the State Highway Commission to issue State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds (the “Bonds”) in a total principal amount not to exceed five hundred seventy-five million dollars (\$575,000,000). If approved, such bonds will be issued in several series of various principal amounts from time to time for the purpose of paying the cost of constructing and renovating improvements to interstate highways and related facilities in the State of Arkansas.

(B) The bonds shall be general obligations of the State of Arkansas, payable from certain designated revenues and also secured by the full faith and credit of the State of Arkansas, including its general

revenues. Pursuant to this subchapter, the “Bond Act”, the bonds will be repaid first from revenues derived from federal highway assistance funding allocated to the State of Arkansas designated as federal highway interstate maintenance funds, and, if needed, that portion of national highway system funds authorized by State Highway Commission Minute Order 98-214 adopted September 22, 1998, and, second, from revenue derived from the increase in the excise tax levied on distillate special fuels and diesel pursuant to § 26-56-201(e) and transferred to the State Highway and Transportation Department Fund pursuant to § 27-70-207(d) in accordance with § 26-56-201(f) and § 26-55-1006(d). To the extent that designated revenues are insufficient to make timely payment of debt service on the bonds, such payment shall be made from the general revenues of the State of Arkansas. The bonds shall be issued pursuant to the authority of and the terms set forth in this subchapter.

(C) Pursuant to this subchapter, the specific highway improvements to be financed are limited to restoration and improvements to all of the interstate highway systems within the state, including roadways, bridges, or rights-of-way under the jurisdiction of the commission, which shall also include the acquisition, construction, reconstruction, and renovation of such interstate highway systems and facilities appurtenant or pertaining thereto.

(D) Pursuant to this subchapter, “designated revenues” are defined as that portion designated by the commission of all funds received or to be received from the federal government of the United States as federal highway interstate maintenance funds, and, if needed, that portion of national highway system funds authorized by State Highway Commission Minute Order 98-214 adopted September 22, 1998, and revenues derived from the increase in taxes levied on distillate special fuels pursuant to § 26-56-201(e) and transferred to the State Highway and Transportation Department Fund pursuant to § 27-70-207(d) in accordance with § 26-56-201(f) and § 26-55-1006(d). Designated revenues shall not include the revenues derived from the increase in tax on motor fuel, gasoline, resulting from the Arkansas Distillate Special Fuel Excise Tax Act of 1999 and the Motor Fuel Excise Tax Act of 1999, §§ 26-55-1005, 26-55-1006, 26-56-201, and 27-72-305. The bonds are further secured by the full faith and credit of the State of Arkansas, and to the extent that designated revenues are insufficient to make timely payment of debt service on the bonds, the general revenues of the state shall be used to pay debt service on the bonds. Pursuant to § 26-56-201, the excise tax on distillate special fuels, in addition to the taxes levied pursuant to §§ 26-56-201, 26-56-502, and 26-56-601, will increase by two cents (2¢) per gallon on April 1, 1999, and the additional tax levied by § 26-56-201(e) shall increase to four cents (4¢) per gallon on the first anniversary of such date.

(c)(1) The ballot title shall be “Issuance of State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds and pledge of full faith and credit of the State of Arkansas.”

(2) On each ballot there shall be printed the title, the proposition set forth in § 27-64-206(b)(2) of this section, and the following:

FOR issuance of State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds in an amount not to exceed \$575,000,000 and the pledge of the full faith and credit of the State of Arkansas to further secure such bonds ..... [ ]

AGAINST issuance of State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds in an amount not to exceed \$575,000,000 and the pledge of the full faith and credit of the State of Arkansas to further secure such bonds ..... [ ]

(d)(1) The county boards of election commissioners in each of the several counties of the state shall hold and conduct the election, and each such board is hereby authorized and directed to take such action with respect to the appointment of election officials and such other matters as are required by the laws of the state. The vote shall be canvassed and the result thereof declared in each county by such boards.

(2) Within ten (10) days after the date of the election, the results shall be certified by such county boards to the Secretary of State, who shall forthwith tabulate all returns so received and certify to the Governor the total vote for and against the proposition submitted pursuant to this subchapter.

(e)(1) The result of the election shall be proclaimed by the Governor by the publication of such proclamation one (1) time in a newspaper of general circulation in the State of Arkansas.

(2) The results as proclaimed shall be conclusive unless a complaint challenging such results is filed within thirty (30) days after the date of such publication in the Pulaski County Circuit Court.

(f)(1) If a majority of the qualified electors voting on the proposition vote in favor of the issuance of the bonds, then the commission shall proceed with the issuance of bonds in the manner and on the terms set forth in this subchapter.

(2) If a majority of the qualified electors voting on the proposition vote against the issuance of the bonds, none of the bonds authorized by this subchapter shall be issued.

(g) Subsequent elections may be called by the Governor if the proposition fails, but each such subsequent election may be held no earlier than six (6) months after the date of the preceding election.

**History.** Acts 1999, No. 1027, § 5; 2005, No. 2145, § 76; 2007, No. 1049, § 97; 2009, No. 1480, § 116; 2011, No. 752, §§ 4, 5.

**Amendments.** The 2011 amendment substituted “§ 27-70-207(d)” for “§ 27-70-207(c)” in (b)(2)(B) and (b)(2)(D).

**27-64-211. Sources of repayment.**

(a)(1) The bonds shall be general obligations of the State of Arkansas secured and payable from the designated revenues, as defined herein, and the general revenues of the state.



(2) The bonds will be payable first from certain designated revenues, specifically:

(A) That portion designated by the State Highway Commission of funds received or to be received from the federal government of the United States as federal highway assistance funding allocated to the state designated as federal highway interstate maintenance funds, and, if needed, that portion of national highway system funds authorized by State Highway Commission Minute Order 98-214 adopted September 22, 1998; and

(B) Revenues derived from the increase in taxes levied on distillate special fuels pursuant to § 26-56-201 and transferred to the State Highway and Transportation Department Fund pursuant to § 27-70-207(d) in accordance with § 26-55-1006(d) and § 26-56-201(f).

(3) To the extent that designated revenues are insufficient to make timely payment of debt service on the bonds, such payment shall be made from the general revenues of the State of Arkansas.

(b) In order to secure the payment of debt service, any trust instrument, resolution, or other document setting forth the security for the bondholders may provide for the direct payment of the federal highway assistance funds that are designated revenues directly into a trust fund or to a paying agent for the payment of debt service on the bonds, and it shall not be necessary for such funds to be deposited with the State Treasury.

**History.** Acts 1999, No. 1027, § 10; substituted “§ 27-70-207(d)” for “§ 27-70-2011, No. 752, § 6. 207(c)” in (a)(2)(B).

**Amendments.** The 2011 amendment

## **SUBCHAPTER 4 — ARKANSAS INTERSTATE HIGHWAY FINANCING ACT OF 2007**

### **SECTION.**

27-64-405. Election.

27-64-410. Sources of repayment.

### **27-64-405. Election.**

(a) No bonds shall be issued under this act unless the authority of the State Highway Commission to issue such bonds is approved by a majority of the qualified electors of the state voting on the question at a statewide election called by proclamation of the Governor. Such election may be in conjunction with a general election or it may be a special election. Notice of such election shall be published by the Secretary of State in a newspaper of general circulation in the state at least thirty (30) days prior to such election, and notice thereof shall be mailed to each county board of election commissioners and the sheriff of each county at least sixty (60) days prior to such election.

(b) The notice of election shall state that the election is to be held for the purpose of submitting to the people the following proposition in substantially the form set forth in this subsection:

“Authorizing the State Highway Commission to issue State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds (the ‘Bonds’) from time to time provided that the total principal amount outstanding from the issuance of such bonds, together with the total principal amount outstanding from the issuance of bonds pursuant to the Arkansas Highway Financing Act of 1999, § 27-64-201 et seq., shall not, at any time, exceed five hundred seventy-five million dollars (\$575,000,000). If approved, the bonds will be issued in one (1) or more series of various principal amounts with the last series being issued no later than December 31, 2015. The bonds shall be issued for the purpose of paying the cost of constructing and renovating improvements to interstate highways and related facilities in the State of Arkansas.

“The bonds shall be general obligations of the State of Arkansas, payable from certain designated revenues and also secured by the full faith and credit of the State of Arkansas, including its general revenues. Pursuant to the Arkansas Interstate Highway Financing Act of 2007 (the ‘Bond Act’), § 27-64-401 et seq., the bonds will be repaid first from: (1) revenues derived from federal highway assistance funding allocated to the State of Arkansas designated as federal highway interstate maintenance funds, and (2) revenue derived from the increase in the excise tax levied on distillate special fuels (diesel) pursuant to § 26-56-201(e) and transferred to the State Highway and Transportation Department Fund pursuant to § 27-70-207(d) in accordance with § 26-55-1006(d). To the extent that designated revenues are insufficient to make timely payment of debt service on the bonds, such payment shall be made from the general revenues of the State of Arkansas. The bonds shall be issued pursuant to the authority of and the terms set forth in the Bond Act, § 27-64-401 et seq.

“Pursuant to the Bond Act, § 27-64-401 et seq., the highway improvements to be financed are limited to the restoration and improvements to all of the interstate highway system within the state, including roadways, bridges, or rights-of-way under jurisdiction of the State Highway Commission, which shall also include the acquisition, construction, reconstruction, and renovation of such interstate highway system and facilities appurtenant or pertaining thereto.

“Pursuant to the Bond Act, § 27-64-401 et seq., ‘designated revenues’ are defined as: (1) that portion designated by the commission of all funds received or to be received from the federal government as federal highway interstate maintenance funds, and (2) revenues derived from the increase in taxes levied on distillate special fuels pursuant to § 26-56-201(e) and transferred to the State Highway and Transportation Department Fund pursuant to Arkansas Code § 27-70-207(d) in accordance with § 26-55-1005(d). Designated revenues shall not include the revenues derived from the increase in tax on motor fuel (gasoline) resulting from the ‘Arkansas Distillate Special Fuel Excise Tax Act of 1999’ and the ‘Motor Fuel Excise Tax Act of 1999’, §§ 26-55-1005, 26-55-1006, 26-56-201, and 27-72-305. The bonds are further secured by the full faith and credit of the State of Arkansas, and to the



extent ‘designated revenues’ are insufficient to make timely payment of debt service on the bonds, the general revenues of the state shall be used to pay debt service on the bonds.”

(c) The ballot title shall be “Issuance of State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds and pledge of full faith and credit of the State of Arkansas.” On each ballot there shall be printed the title, the proposition set forth in § 27-64-406, and the following:

“FOR authorizing the State Highway Commission to issue State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds from time to time provided that the total principal amount outstanding from the issuance of such bonds, together with the total principal amount outstanding from the issuance of bonds pursuant to the Arkansas Highway Financing Act of 1999, Arkansas Code § 27-64-201 et seq., shall not, at any time, exceed five hundred seventy-five million dollars (\$575,000,000); such bonds to be issued in one or more series of various principal amounts, with the last series being issued no later than December 31, 2015, and to be secured by the full faith and credit of the State of Arkansas .....[ ]”

“AGAINST authorizing the State Highway Commission to issue State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds from time to time provided that the total principal amount outstanding from the issuance of such bonds, together with the total principal amount outstanding from the issuance of bonds pursuant to the Arkansas Highway Financing Act of 1999, Arkansas Code § 27-64-201 et seq., shall not, at any time, exceed five hundred seventy-five million dollars (\$575,000,000); such bonds to be issued in one or more series of various principal amounts, with the last series being issued no later than December 31, 2015, and to be secured by the full faith and credit of the State of Arkansas .....[ ]”

(d) The county boards of election commissioners in each of the several counties of the state shall hold and conduct the election, and each such board is hereby authorized and directed to take such action with respect to the appointment of election officials and such other matters as is required by the laws of the state. The vote shall be canvassed and the result thereof declared in each county by such boards. The results shall, within ten (10) days after the date of the election, be certified by such county boards to the Secretary of State, who shall forthwith tabulate all returns so received and certify to the Governor the total vote for and against the proposition submitted pursuant to this act.

(e) The result of the election shall be proclaimed by the Governor by the publication of such proclamation one (1) time in a newspaper of general circulation in the State of Arkansas, and the results as proclaimed shall be conclusive unless a complaint is filed within thirty (30) days after the date of such publication in the Pulaski County Circuit Court challenging such results.

(f) If a majority of the qualified electors voting on the proposition vote in favor of the proposition, then the commission shall be authorized to



issue bonds in the manner and on the terms set forth in this act. If a majority of the qualified electors voting on the proposition vote against the proposition, the commission shall have no such authority. Subsequent elections may be called by the Governor if the proposition fails, but each such subsequent election may be held no earlier than six (6) months after the date of the preceding election.

**History.** Acts 2007, No. 511, § 1; 2009, No. 153, § 2; 2009, No. 483, § 6; 2011, No. 752, § 7. substituted “§ 27-70-207(d)” for “§ 27-70-207(c)” in (b) and in the second undesignated paragraph of (b).

**Amendments.** The 2011 amendment

**27-64-410. Sources of repayment.**

The State of Arkansas Federal Grant Anticipation and Tax Revenue Bonds or GARVEE bonds shall be general obligations of the State of Arkansas secured and payable from the designated revenues, as defined herein, and the general revenues of the state. The bonds will be payable first from certain designated revenues, specifically: (1) that portion designated by the State Highway Commission of funds received or to be received from the federal government as federal highway assistance funding allocated to the state designated as federal highway interstate maintenance funds, and (2) revenues derived from the increase in taxes levied on distillate special fuels pursuant to section 2 of the “Arkansas Distillate Special Fuel Excise Tax Act of 1999” and the “Motor Fuel Excise Tax Act of 1999”, §§ 26-55-1005, 26-55-1006, 26-56-201, and 27-72-305 and transferred to the State Highway and Transportation Department Fund pursuant to § 27-70-207(d) in accordance with § 26-55-1005(d). To the extent that designated revenues are insufficient to make timely payment of debt service on the bonds, such payment shall be made from the general revenues of the State of Arkansas. In order to secure the payment of debt service, any trust instrument, resolution, or other document setting forth the security for the bondholders may provide for the direct payment of the federal highway assistance funds that are designated revenues directly into a trust fund, or to a paying agent, for the payment of debt service on the bonds, and it shall not be necessary for such funds to be deposited into the State Treasury.

**History.** Acts 2007, No. 511, § 1; 2011, No. 752, § 8. substituted “§ 27-70-207(d)” for “§ 27-70-207(c).”

**Amendments.** The 2011 amendment

**SUBCHAPTER 5 — ARKANSAS HIGHWAY FINANCING ACT OF 2011**

- SECTION.
- 27-64-501. Title.
- 27-64-502. Findings.
- 27-64-503. Definitions.
- 27-64-504. Authorization — Purposes.
- 27-64-505. Election.

- SECTION.
- 27-64-506. Procedure for issuing State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds.
- 27-64-507. Terms of bonds.

## SECTION.

27-64-508. Sale of bonds.  
27-64-509. Employment of professionals.  
27-64-510. Sources of repayment.  
27-64-511. Investment of proceeds.

## SECTION.

27-64-512. Refunding bonds.  
27-64-513. Tax exemption.  
27-64-514. Powers of the State Highway  
Commission.

**27-64-501. Title.**

This subchapter may be referred to and cited as the “Arkansas Highway Financing Act of 2011”.

**History.** Acts 2011, No. 773, § 3.

**27-64-502. Findings.**

The General Assembly of the State of Arkansas finds that:

(1) There is an immediate need for highway improvements throughout the State of Arkansas in order to provide for the health, safety, and welfare of its citizens and to promote economic development within the state;

(2) Through revenues generated pursuant to the Arkansas Highway Financing Act of 1999, § 27-64-201 et seq., the State Highway Commission has been successful in completing the rehabilitation of much of the state’s Interstate Highway System and that the rehabilitation has been carried out in an efficient, cost-effective manner;

(3) Continued improvement of the Interstate Highway System and other routes on the National Highway System is necessary, and the best way to accomplish the improvements expeditiously is through the issuance of additional federal highway grant anticipation and tax revenue bonds to finance highway improvements; and

(4) Bonds should be payable from revenues currently designated by the Arkansas Highway Financing Act of 1999, § 27-64-201 et seq., including federal highway assistance funding and the proceeds from the Arkansas Distillate Special Fuel Excise Tax Act of 1999 and the Motor Fuel Excise Tax Act of 1999, §§ 26-55-1005, 26-55-1006, 26-56-201, and 27-72-305, and § 26-56-801 et seq.; and

(5) The repayment of the bonds should be guaranteed by the full faith and credit of the state.

**History.** Acts 2011, No. 773, § 3.

**27-64-503. Definitions.**

As used in this subchapter:

(1) “Bonds” means the State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds, also known as “GARVEE bonds”, as authorized in this subchapter;

(2) “Commission” means the State Highway Commission;

(3) “Debt service” means all amounts required for the payment of principal, interest, and premium, if any, due with respect to the bonds in any fiscal year along with all associated costs, including the fees and

costs of paying agents and trustees, remarketing agent fees, credit enhancement costs, and other amounts necessary in connection with the bonds;

(4) “Designated revenues” means:

(A) The portion designated by the commission of funds received or to be received from the federal government as federal highway assistance funding allocated to the state; and

(B) Revenues derived from the distillate special fuel tax levied under:

(i) § 26-56-201(e) that are available for expenditure after any distributions required by the Arkansas Highway Financing Act of 1999, § 27-64-201 et seq., the Arkansas Interstate Highway Financing Act of 2005, § 27-64-301 et seq., and the Arkansas Interstate Highway Financing Act of 2007, § 27-64-401 et seq.; and

(ii) § 26-56-802; and

(5) “Highway improvements” or “highway improvement projects” means restoration and improvements to the Interstate Highway System and other routes within the National Highway System within the state, including roadways, bridges, or rights-of-way under the jurisdiction of the commission and includes the acquisition, construction, reconstruction, renovation of the Interstate Highway System and other routes within the National Highway System within the state and facilities appurtenant or pertaining to the Interstate Highway System and other routes within the National Highway System.

**History.** Acts 2011, No. 773, § 3.

### **27-64-504. Authorization — Purposes.**

(a)(1) Subject to the one-time approval of the voters in a statewide election, the State Highway Commission may issue State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds from time to time if the total principal amount outstanding from the issuance of the bonds, together with the total principal amount outstanding from the issuance of bonds pursuant to the Arkansas Highway Financing Act of 1999, § 27-64-201 et seq., the Arkansas Interstate Highway Financing Act of 2005, § 27-64-301 et seq., and the Arkansas Interstate Highway Financing Act of 2007, § 27-64-401 et seq., does not at any time exceed one billion one hundred million dollars (\$1,100,000,000).

(2) The bonds will be issued in one (1) or more series of various principal amounts with the last series being issued no later than December 31, 2017.

(b) The purpose of the bond issuance shall be to:

(1) Accelerate highway improvement projects already underway or scheduled;

(2) Fund new highway improvement projects;

(3) Finance the restoration, reconstruction, and renovation of highway improvements within the State of Arkansas; and



(4) Pay the costs of issuance of the bonds or other credit enhancement.

**History.** Acts 2011, No. 773, § 3.

### **27-64-505. Election.**

(a)(1) State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds shall not be issued under this subchapter unless the levy of the additional tax on distillate special fuel under § 26-56-802 and the authority of the State Highway Commission to issue the bonds from time to time are approved by a majority of the qualified electors of the state voting on the question at a statewide election called by proclamation of the Governor.

(2) The election may be in conjunction with a general election, or it may be a special election.

(b)(1) Notice of the election shall be:

(A) Published by the Secretary of State in a newspaper of general circulation in the state at least thirty (30) days prior to the election; and

(B) Mailed to each county board of election commissioners and the sheriff of each county at least sixty (60) days prior to the election.

(2) The notice of election shall state that the election is to be held for the purpose of submitting to the people the following proposition in substantially the following form:

“Authorizing the State Highway Commission to issue State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds (the ‘Bonds’) if the total principal amount outstanding from the issuance of the bonds, together with the total principal amount outstanding from the issuance of bonds pursuant to the Arkansas Highway Financing Act of 1999, § 27-64-201 et seq., the Arkansas Interstate Highway Financing Act of 2005, § 27-64-301 et seq., and the Arkansas Interstate Highway Financing Act of 2007, § 27-64-401 et seq. shall not, at any time, exceed one billion one hundred million dollars (\$1,100,000,000). If approved, the bonds will be issued in several series of various principal amounts from time to time, with the last series being issued no later than December 31, 2017, for the purpose of paying the cost of constructing and renovating improvements to the Interstate Highway System and related facilities in the State of Arkansas and improvements to other routes on the National Highway System and related facilities in the State of Arkansas.”

“The bonds shall be general obligations of the State of Arkansas, payable from certain designated revenues including particularly and without limitation a new tax described below, and also secured by the full faith and credit of the State of Arkansas, including its general revenues.”

“Under the Arkansas Highway Financing Act of 2011 (the ‘Bond Act’), the bonds will be repaid first from: (1) revenues derived from federal highway assistance funding allocated to the State of Arkansas; (2)

revenues derived from the excise tax levied on distillate special fuel (diesel) pursuant to Arkansas Code § 26-56-201(e) that are available for expenditure after any distributions required by the Arkansas Highway Financing Act of 1999, the Arkansas Interstate Highway Financing Act of 2005, and the Arkansas Interstate Highway Financing Act of 2007; and (3) revenues derived from a new excise tax levied on distillate special fuel (diesel) pursuant to Arkansas Code § 26-56-802 at the rate of five cents (5¢) per gallon if the measure is approved. To the extent that designated revenues are insufficient to make timely payment of debt service on the bonds, the payment shall be made from the general revenues of the State of Arkansas. The bonds shall be issued pursuant to the authority of and the terms set forth in the Bond Act.”

“Under the Bond Act, the highway improvements to be financed are limited to the restoration and improvements to the Interstate Highway System and of other routes on the National Highway System within the state, including roadways, bridges, or rights-of-way under jurisdiction of the State Highway Commission, which shall also include the acquisition, construction, reconstruction, and renovation of the Interstate Highway System and of other routes on the National Highway System and facilities appurtenant or pertaining thereto.”

“Under Arkansas Code § 26-56-802, there is levied, subject to approval of this measure, a new excise tax levied on distillate special fuel (diesel) at the rate of five cents (5¢) per gallon. This tax shall not be levied unless this measure is approved by the voters.”

“Under the Bond Act, ‘designated revenues’ are defined as: (1) the portion designated by the commission of funds received or to be received from the federal government of the United States as federal highway assistance funding allocated to the state; (2) revenues derived from the excise tax levied on distillate special fuel (diesel) pursuant to Arkansas Code § 26-56-201(e) that are available for expenditure after any distributions required by the Arkansas Highway Financing Act of 1999, the Arkansas Interstate Highway Financing Act of 2005, and the Arkansas Interstate Highway Financing Act of 2007; and (3) revenues derived from the excise tax levied on distillate special fuel (diesel) pursuant to Arkansas Code § 26-56-802, which is a new five cent per gallon tax to be levied upon the approval of this measure. The bonds are further secured by the full faith and credit of the State of Arkansas, and to the extent ‘designated revenues’ are insufficient to make timely payment of debt service on the bonds, the general revenues of the state shall be used to pay debt service on the bonds.”

(c) The ballot title shall be “Issuance of State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds and pledge of full faith and credit of the State of Arkansas, and the levy of an additional five cent per gallon tax on distillate special fuel (diesel)”. On each ballot there shall be printed the title, the proposition set forth in subdivision (b)(2) of this section, and the following:

“FOR authorizing the State Highway Commission to issue State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds

provided that the total principal amount outstanding from the issuance of the bonds, together with the total principal amount outstanding from the issuance of bonds pursuant to Arkansas Highway Financing Act of 1999, the Arkansas Interstate Highway Financing Act of 2005, and the Arkansas Interstate Highway Financing Act of 2007, shall not, at any time, exceed one billion one hundred million dollars (\$1,100,000,000); such bonds to be issued in one or more series of various principal amounts with the last series being issued no later than December 31, 2017, and the pledge of the full faith and credit of the State of Arkansas to further secure the bonds, and the levy of an additional five cent per gallon excise tax on distillate special fuel (diesel) to pay, as described above, along with other ‘designated revenues,’ as defined in the Arkansas Highway Financing Act of 2011, debt service on bonds .....[ ]”

“AGAINST authorizing the State Highway Commission to issue State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds provided that the total principal amount outstanding from the issuance of the bonds, together with the total principal amount outstanding from the issuance of bonds pursuant to Arkansas Highway Financing Act of 1999, the Arkansas Interstate Highway Financing Act of 2005, and the Arkansas Interstate Highway Financing Act of 2007, shall not, at any time, exceed one billion one hundred million dollars (\$1,100,000,000); such bonds to be issued in one or more series of various principal amounts with the last series being issued no later than December 31, 2017, and the pledge of the full faith and credit of the State of Arkansas to further secure the bonds, and the levy of an additional five cent per gallon excise tax on distillate special fuel (diesel) to pay, as described above, along with other ‘designated revenues,’ as defined in the Arkansas Highway Financing Act of 2011, debt service on bonds .....[ ]”

(d)(1) Each county board of election commissioners shall hold and conduct the election and may take any action with respect to the appointment of election officials and other matters as required by the laws of the state.

(2)(A) The vote shall be canvassed, and the result of the vote declared in each county by the board.

(B) Within ten (10) days after the date of the election, the results shall be certified by the boards to the Secretary of State, who shall tabulate all returns received and certify to the Governor the total vote for and against the proposition submitted pursuant to this subchapter.

(e)(1) The result of the election shall be proclaimed by the Governor by the publication of the proclamation one (1) time in a newspaper of general circulation in the State of Arkansas.

(2) The results as proclaimed shall be conclusive unless a complaint is filed within thirty (30) days after the date of the publication in Pulaski County Circuit Court challenging the results.

(f)(1) If a majority of the qualified electors voting on the proposition vote in favor of the proposition, then the commission may issue bonds



from time to time in the manner and on the terms set forth in this subchapter.

(2) If a majority of the qualified electors voting on the proposition vote against the proposition, the commission shall have no authority to issue bonds.

**History.** Acts 2011, No. 773, § 3.

### **27-64-506. Procedure for issuing State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds.**

(a) Prior to the issuance of any series of State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds, the State Highway Commission shall adopt a resolution authorizing the issuance of the series of bonds.

(b) Each resolution shall contain those terms, covenants, and conditions as are desirable and consistent with this subchapter, including without limitation those pertaining to the establishment and maintenance of funds and accounts, the deposit and investment of the federal highway assistance payments and bond proceeds, and the rights and obligations of the state, its officers and officials, the commission, and the registered owners of the bonds.

(c)(1) The resolutions of the commission may provide for the execution and delivery by the commission of a trust indenture or trust indentures with one (1) or more banks or trust companies located within or without the state, containing any of the terms, covenants, and conditions required under subsection (b) of this section and any other terms and conditions deemed necessary by the commission.

(2) The trust indenture or trust indentures are binding upon the commission and the state and their respective officers and officials.

**History.** Acts 2011, No. 773, § 3.

### **27-64-507. Terms of bonds.**

The State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds shall be subject to the following terms and conditions:

(1)(A) The bonds shall be issued in series in amounts sufficient to finance all or part of the costs of construction and maintenance of highway improvements.

(B) The respective series of bonds shall be designated by the year in which the bonds are issued.

(C) If more than one (1) series of bonds is to be issued in a particular year, the series shall be designated alphabetically;

(2)(A) The bonds of each series shall have the date or dates as the State Highway Commission shall determine.

(B) The bonds shall mature or be subject to mandatory sinking fund redemption over a period ending not later than twelve (12) years after the date of issue of each series.

(C) Refunding bonds issued under § 27-64-512 shall mature or be subject to mandatory sinking fund redemption over a period ending not later than twelve (12) years after the date of issue of the original bonds of each series;

(3)(A) The bonds of each series shall bear interest at the rate or rates determined by the commission at the sale of the bonds.

(B) The bonds may bear interest at either a fixed or a variable rate or may be convertible from one (1) interest rate mode to another.

(C) The interest shall be payable at the times as the commission shall determine;

(4) The bonds shall be issued in the form of bonds registered as to both principal and interest without coupons;

(5) The commission shall determine:

(A) The denominations of the bonds;

(B) Whether the bonds may be made exchangeable for bonds of another form or denomination bearing the same rate of interest;

(C) When the bonds may be made payable and the places within or without the state where the bonds may be payable;

(D) Whether the bonds may be made subject to redemption prior to maturity and the manner of and prices for redemption; and

(E) Any other terms and conditions; and

(6)(A) Each bond shall be executed with the facsimile signatures of the Chair of the State Highway Commission and the secretary of the commission, and the seal of the commission shall be affixed or imprinted on the bond.

(B) Delivery of executed bonds shall be valid, notwithstanding any change in the persons holding the offices that occurs after the bonds have been executed.

**History.** Acts 2011, No. 773, § 3.

## **27-64-508. Sale of bonds.**

(a)(1) The State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds may be sold in any manner, either at private or public sale, and upon terms as the State Highway Commission shall determine to be reasonable and expedient for effecting the purposes of this subchapter.

(2)(A) The bonds may be sold at a price acceptable to the commission.

(B) The price may include a discount or premium.

(b)(1) If the bonds are to be sold at public sale, the commission shall give notice of the offering of the bonds in a manner reasonably designed to notify participants in the public finance industry that the offering is being made.

(2) The commission shall set the terms and conditions of bidding, including the basis on which the winning bid will be selected.

(c) The commission may structure the sale of bonds utilizing financing techniques that are recommended by the commission's professional advisors in order to take advantage of market conditions and to obtain

the most favorable interest rates consistent with the purposes of this subchapter.

(d) The commission may enter into any ancillary agreements in connection with the sale of the bonds as it deems necessary and advisable, including without limitation bond purchase agreements, remarketing agreements, and letter of credit reimbursement agreements.

**History.** Acts 2011, No. 773, § 3.

### **27-64-509. Employment of professionals.**

The State Highway Commission may retain any professionals necessary to accomplish the issuance and sale of the State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds, including without limitation legal counsel, financial advisors, underwriters, trustees, paying agents, and remarketing agents.

**History.** Acts 2011, No. 773, § 3.

### **27-64-510. Sources of repayment.**

(a) The State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds shall be general obligations of the State of Arkansas secured and payable from the designated revenues and the general revenues of the state.

(b) The bonds shall be payable first from the following designated revenues:

(1) The portion designated by the State Highway Commission of funds received or to be received from the federal government as federal highway assistance funding allocated to the state; and

(2) Revenues derived from the distillate special fuel tax levied under:

(A) Section 26-56-201(e) that are available for expenditure after any distributions required by the Arkansas Highway Financing Act of 1999, § 27-64-201 et seq., the Arkansas Interstate Highway Financing Act of 2005, § 27-64-301 et seq., and the Arkansas Interstate Highway Financing Act of 2007, § 27-64-401 et seq.; and

(B) Section 26-56-802.

(c) If the amount of designated revenues is insufficient to make timely payment of debt service on the bonds, the payment shall be made from the general revenues of the State of Arkansas.

(d)(1) In order to secure the payment of debt service, any trust instrument, resolution, or other document setting forth the security for the bondholders may provide for the direct payment of the federal highway assistance funds that are designated revenues directly into a trust fund or to a paying agent for the payment of debt service on the bonds.

(2) It is not necessary for the funds to be deposited into the State Treasury.



(e) The additional distillate special fuel tax levied under § 26-56-802 shall terminate as provided under § 26-56-802(c)(3).

**History.** Acts 2011, No. 773, § 3.

### **27-64-511. Investment of proceeds.**

(a) Designated revenues and proceeds of the State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds held pending disbursement on highway improvements shall be invested by the State Highway Commission to the full extent practicable pending disbursement for the purposes intended.

(b) Notwithstanding any other provision of law, the investments shall be in accordance with the terms of the resolution or trust indenture authorizing or securing the series of bonds to which the designated revenues or bond proceeds appertain to the extent that the terms of the resolution or trust indenture are applicable.

**History.** Acts 2011, No. 773, § 3.

### **27-64-512. Refunding bonds.**

(a) The State Highway Commission may issue bonds for the purpose of refunding the State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds previously issued pursuant to this subchapter if the total amount of bonds outstanding after the refunding is completed does not exceed the total amount authorized by this subchapter.

(b) The refunding bonds shall be general obligations of the State of Arkansas and shall be secured and sold in accordance with the provisions of this subchapter.

**History.** Acts 2011, No. 773, § 3.

### **27-64-513. Tax exemption.**

(a) All State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds issued under this subchapter and interest on the bonds shall be exempt from all taxes of the State of Arkansas, including income, inheritance, and property taxes.

(b) The bonds shall be eligible to secure deposits of all public funds and shall be legal for investment of municipal, county, bank, fiduciary, insurance company, and trust funds.

**History.** Acts 2011, No. 773, § 3.

### **27-64-514. Powers of the State Highway Commission.**

(a) All powers granted to the State Highway Commission under this subchapter are in addition to the powers of the commission under Arkansas Constitution, Amendment 42, and the laws of the State of Arkansas.

(b) No member of the commission shall be liable personally for any reason arising from the issuance of the State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds pursuant to this subchapter unless the member acts with corrupt intent.

**History.** Acts 2011, No. 773, § 3.

**CHAPTER 65**  
**ARKANSAS STATE HIGHWAY**  
**AND TRANSPORTATION**  
**DEPARTMENT — STATE**  
**HIGHWAY COMMISSION**

**27-65-102. Administration of department.**

**A.C.R.C. Notes.** Acts 2011, No. 932, § 9, provided: “REPORTING REQUIREMENTS. The Arkansas Highway Commission is hereby authorized to take appropriate action as necessary to restrict or reduce the operating, administration, and other associated costs of the State Highway and Transportation Department, including the Arkansas Highway Police Division, for the fiscal year ending June 30, 2012. Provided further, that the Arkansas

Highway Commission is directed to furnish the Arkansas Legislative Council with an expenditure status report regarding the financial activities of the State Highway and Transportation Department at least quarterly, beginning no later than September 30, 1989.  
“The provisions of this section shall be in effect only from July 1, 2011 through June 30, 2012.”

**CHAPTER 66**  
**ESTABLISHMENT AND MAINTENANCE GENERALLY**  
**SUBCHAPTER 4 — PRIVATE ROADS**

**27-66-401. Establishment.**

**CASE NOTES**

**ANALYSIS**

**In General.**  
**Eminent Domain.**

**In General.**  
Landlocked landowner’s claims seeking to access the landowner’s property were not barred by doctrines of res judicata and law of the case; the landowner’s prior appeal before a circuit court was dismissed without prejudice and no final order on the landowner’s claim under this section had been entered. *Bell v. Hoofman*, 2010 Ark. App. 377, — S.W.3d — (2010).

**Eminent Domain.**  
Commission was entitled to summary judgment in an owner’s suit to establish a road across the commission’s land because the proposed easement would have divested the state, via the commission, of the sole right to occupy the property at issue; Ark. Const. Art. 7, § 28, by itself, did not grant eminent domain power to county court to establish roads. If the county court could not have exercised the power of eminent domain to establish roads to access landlocked parcels under the constitution without the implementing legislation of\* §§ 27-66-401 to 404,

then it could not have been said that Ark. Const. Art. 7, § 28 alone was sufficient to overcome the state's sovereign immunity. Ark. Game & Fish Comm'n v. Eddings, 2011 Ark. 47, — S.W.3d — (2011).

## CHAPTER 67

### STATE HIGHWAY SYSTEM

#### SUBCHAPTER.

#### 2. HIGHWAY DESIGNATION, CONSTRUCTION, AND MAINTENANCE.

### SUBCHAPTER 2 — HIGHWAY DESIGNATION, CONSTRUCTION, AND MAINTENANCE

#### SECTION.

#### 27-67-224. The Arkansas Wine Country Trail.

#### 27-67-224. The Arkansas Wine Country Trail.

(a)(1) To provide more detailed directions on highways, roads, and streets to agritourism vineyards and wineries in the State of Arkansas, the Arkansas Wine Country Trail is established.

(2)(A) The Arkansas Wine Country Trail shall include the highways, roads, and streets that lead to the wineries permitted by the Alcoholic Beverage Control Division of the Department of Finance and Administration that produce wine from Arkansas-grown fruits and vegetables.

(B) The Arkansas State Highway and Transportation Department shall determine the location of the Arkansas Wine Country Trail in consultation with the Department of Parks and Tourism.

(3) A winery is eligible to have signs near its facility if it:

- (A) Is a winery permitted by the division; and
- (B) Offers tours.

(4) The signs shall be of size and shape and of materials designated by the Arkansas State Highway and Transportation Department in consultation with the Department of Parks and Tourism.

(b)(1) The sign for the Arkansas Wine Country Trail shall have on it a cluster of grapes in front of a classic bottle of Bordeaux wine with a statement approved by the Arkansas State Highway and Transportation Department, a directional arrow, and of one (1) of the following phrases:

- (A) "Winery Tours";
- (B) "Winery and Vineyard Tours";
- (C) "Wine Cellar Tours"; or
- (D) "Wine Cellar and Vineyard Tours".

(2) Information for proper placement will be made available by the Arkansas State Highway and Transportation Department.

(3) This sign, but on a smaller scale, shall be used as the symbol on the state highway map and in all tourism literature published by the



Department of Parks and Tourism to indicate the Arkansas Wine Country Trail or individual vineyards, wineries, or cellars that are part of the trail.

**History.** Acts 2011, No. 1052, § 2.  
**A.C.R.C. Notes.** Acts 2011, No. 1052, § 1, provided: “The General Assembly finds that:  
“(1) Arkansas is known not only for its beautiful and abundant mountains, lakes, rivers, and plateaus, but also for picturesque vineyards and historic wine cellars;  
“(2) The vineyards and cellars in the state provide free tours and tastings of first-class, award-winning wines that have garnered medals in national and international competitions;  
“(3) Data and statistics from the Department of Parks and Tourism indicate that efforts by Arkansas’s grape and wine industry in improving these tour facilities

has generated increased tourism and provided a major boost to our economy;  
“(4) The states around Arkansas have developed well-marked wine trails that enable more tourists to locate and travel to their vineyards and cellars; and  
“(5) The great vineyard and wine agri-tourism industry should be actively encouraged, and we should assist tourists and travelers in our state to locate the vineyards and wineries that offer free tours by clearly marking the appropriate highways, roads, and streets with signs that have been approved by the Department of Parks and Tourism and the Arkansas State Highway and Transportation Department.”

CHAPTER 70  
HIGHWAY REVENUE DISTRIBUTION

SUBCHAPTER.  
2. ARKANSAS HIGHWAY REVENUE DISTRIBUTION LAW.

SUBCHAPTER 2 — ARKANSAS HIGHWAY REVENUE DISTRIBUTION LAW

SECTION.  
27-70-204. Interest on state highway department funds.

SECTION.  
27-70-207. Distribution to county and city funds.

**Effective Dates.** Acts 2011, No. 1032, § 3: July 1, 2011. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that city streets are in an extreme state of disrepair, particularly in rural municipalities; that municipalities are without an adequate program or adequate funding to allow for significant, long-term, corrective action to repair their streets; and that this act is necessary to initiate a program of remediation for municipal

streets with the involvement and consent of the Arkansas State Highway and Transportation Department so that municipalities can increase the prospects of economic and social development across the state by improving their streets. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2011.”

**27-70-204. Interest on state highway department funds.**

(a) On the first day of business of the month, the Treasurer of State shall compute the average daily balance of the State Highway and Transportation Department Fund, including all internal accounts and funds, including, but not limited to, the State Highway Special Construction Account, the State Aid Road Fund, the State Aid Street Fund, the State Highway and Transportation Department Fund, and any other funds administered by the Arkansas State Highway and Transportation Department during the preceding month and shall transfer on that day to the State Highway and Transportation Department Fund interest on the average daily balance to be computed at a rate equivalent to the average rate of interest earned on all State Treasury funds invested, excluding the interest rate paid on open account deposits, during the preceding month.

(b) All interest earned on the accounts described in subsection (a) of this section shall be classified as special revenues, and the net amount shall be distributed as provided by this subchapter.

**History.** Acts 1979, No. 438, §§ 1, 2; in (a), substituted "State Highway Special Construction Account" for "Special Construction Account" and "State Aid Street Fund" for "State Aid Street Account."  
A.S.A. 1947, §§ 76-332.1, 76-332.2; Acts 2011, No. 1032, § 1.

**Amendments.** The 2011 amendment,

**27-70-207. Distribution to county and city funds.**

(a) As used in this section, "public transportation" means a conveyance of human passengers by bus, van, or any other ground surface vehicle that is:

(1) Provided to the general public or selected groups of the public on a regular or continuing basis; and

(2) Operated by a city, county, or any other person or entity under a contract or agreement with a city or county.

(b)(1)(A) With the exception of those revenues transferred pursuant to Section 2 of the Highway Improvement Revenue Act of 2007, all highway revenues transferred to the County Aid Fund under this subchapter shall be paid over by the Treasurer of State to the treasurers of the respective counties of this state for credit to the county highway fund, there to be used for transportation projects as deemed beneficial by the county to include without limitation:

(i) The maintenance, construction, and reconstruction of roads and bridges in the county highway system and for other surface transportation;

(ii) Public transportation; or

(iii) Any other transportation system improvement or service within the political subdivision, including without limitation those projects defined as a transportation system under § 27-76-103(15) regardless of whether or not the political subdivision is a member of a regional mobility authority.

(B) A county may also use these funds to construct and maintain parking for county courthouses, county administration buildings, county health units, and county parks and to construct and maintain sidewalks that serve county courthouses, county administration buildings, county health units, county parks, public schools, and other publicly owned property.

(C) A county may use these funds to pay for local projects eligible for funding under state programs of the Arkansas State Highway and Transportation Department and the State Highway Commission and under federal programs of the Federal Highway Administration and the Federal Transit Administration of the United States Department of Transportation.

(D) Furthermore, the funds may be used to install and maintain traffic signals where needed to preserve public health, safety, and welfare.

(E) A county may provide these funds to a regional mobility authority to match federal transportation funds for the financing of surface transportation system improvements on state highways, county roads, and city streets.

(2)(A) Funds disbursed to the County Aid Fund pursuant to Section 2 of the Highway Improvement Revenue Act of 2007 may be expended by the counties on any legitimate county purpose and are not limited to the uses set forth in subdivision (b)(1) of this section.

(B) Funds disbursed to the County Aid Fund pursuant to Section 2 of the Highway Improvement Revenue Act of 2007 shall be distributed to the various counties as are other funds contained in the County Aid Fund pursuant to subdivision (b)(3) of this section.

(3) The Treasurer of State shall on or before the tenth day next following the last day of each calendar month make distribution of the revenues on the following basis:

(A) Thirty-one percent (31%) of the amount according to area, with each county to receive the proportion that its area bears to the area of the state;

(B) Seventeen and one-half percent (17.5%) of the amount according to the amount of state motor vehicle license fees collected in the calendar year next preceding any distribution as certified to the Treasurer of State by the Director of the Department of Finance and Administration, with each county to receive the proportion that the total of fees collected from the county bears to the total of fees collected in the state;

(C) Seventeen and one-half percent (17.5%) of the amount according to population based upon the most recent federal decennial census, with each county to receive the proportion that its population bears to the population of the state;

(D) Thirteen and one-half percent (13.5%) of the amount according to rural population based upon the most recent federal decennial census, with each county to receive the proportion that its rural population bears to the rural population of the state; and



(E) Twenty and one-half percent (20.5%) of the amount shall be divided equally among the seventy-five (75) counties.

(c)(1)(A) With the exception of those revenues transferred pursuant to Section 2 of the Highway Improvement Revenue Act of 2007, all highway revenues transferred to the Municipal Aid Fund under the provisions of this subchapter shall be paid over by the Treasurer of State to the treasurers of the respective cities of the first class, cities of the second class, and incorporated towns for credit to the street fund, there to be used for transportation projects as deemed beneficial by the governing body of the political subdivision to include without limitation:

(i) The maintenance, construction, and reconstruction of streets that are not continuations of state highways and for other surface transportation;

(ii) Public transportation; or

(iii) Any other transportation system improvement or service within the political subdivision, including without limitation those projects defined as a transportation system under § 27-76-103(15), regardless of whether or not the political subdivision is a member of a regional mobility authority.

(B) A city may provide these funds to a regional mobility authority to match federal transportation funds for the financing of surface transportation system improvements on state highways, county roads, and city streets.

(2) The Treasurer of State shall on or before the tenth day next following the last day of each calendar month make distribution of the funds on the basis of population according to the most recent federal census, with the amount to be paid over to each city or incorporated town in the proportion that its population bears to the total population of all cities and towns.

(3)(A) Funds disbursed to the Municipal Aid Fund pursuant to Section 2 of the Highway Improvement Revenue Act of 2007 may be expended by the cities on any legitimate municipal purpose and are not limited to the uses set forth in subdivision (c)(1) of this section.

(B) Funds disbursed to the Municipal Aid Fund pursuant to Section 2 of the Highway Improvement Revenue Act of 2007 shall be distributed to the various cities as are other funds contained in the Municipal Aid Fund pursuant to subdivision (c)(2) of this section.

(d)(1) All highway revenues transferred to the State Highway and Transportation Department Fund under the provisions of this subchapter shall be used for the construction, reconstruction, and maintenance of highways and bridges in the state highway system.

(2)(A) However, the Arkansas State Highway and Transportation Department may use highway revenues transferred to the State Highway and Transportation Department Fund for the installation, upgrading, or improvement of any highway-railroad crossing safety device, railroad crossing traffic control device, warning lights, crossing gates, or other railroad crossing safety devices at public highway

railroad crossings and for the construction, reconstruction, and maintenance of any highway-railroad crossing, including the construction or installation of any underpasses or overpasses.

(B) Except for the construction or installation of underpasses or overpasses, the department's goal is to expend one dollar (\$1.00) of state funds for each dollar of federal funds received to improve railroad crossing safety and to reduce railroad crossing accidents.

(C) It is the intent of this subdivision (d)(2) to encourage the State Highway Commission to continue to upgrade the state's highway-railway crossings with traffic control devices, warning lights, crossing gates, and other appropriate devices in order to increase the safety of persons using the state's highways.

**History.** Acts 1965 (1st Ex. Sess.), No. 39, § 5; 1967, No. 11, § 1; 1967, No. 41, § 1; 1967, No. 417, § 1; 1968 (1st Ex. Sess.), No. 10, § 1; A.S.A. 1947, § 76-334; Acts 1989, No. 371, § 1; 1997, No. 361, § 1; 1999, No. 724, § 1; 2001, No. 1216, § 1; 2003, No. 208, § 1; 2005, No. 2275, § 7; 2007, No. 389, § 2; 2007, No. 1100, § 3; 2011, No. 752, § 1.

**Amendments.** The 2011 amendment inserted "and city" in the section head; added present (a) and redesignated the remaining subsections accordingly; rewrote (b)(1)(A); inserted "and the Federal Transit Administration" in (b)(1)(C); rewrote (c)(1)(A); and deleted (c)(1)(B), and redesignated (c)(1)(C) as (c)(1)(B).

## CHAPTER 72

### HIGHWAY REVENUES FOR LOCAL AID

#### SUBCHAPTER.

3. STATE AID ROADS.
4. STATE AID STREETS.

#### SUBCHAPTER 3 — STATE AID ROADS

##### SECTION.

27-72-311. Conditions for use of state aid.  
27-72-320. Advance transfers to county highway funds.

##### SECTION.

27-72-321. Advance transfers to county special purpose road accounts.

#### 27-72-311. Conditions for use of state aid.

Any county shall be entitled to receive state aid and to expend state aid moneys in conjunction with moneys furnished by said county on state aid roads in such county on projects approved for construction in such county provided:

(1) The state aid system in the county has been designated and approved as provided in this subchapter;

(2)(A) The county has employed a county engineer who is a professional engineer as defined in § 17-30-101 to act on behalf of the county as a whole.

(B) If a county judge is a professional engineer as defined in § 17-30-101, the county judge may perform the duties provided in this section for the county engineer.

(C) A county may contract with the Arkansas State Highway and Transportation Department for engineering services instead of employing a county engineer.

(D) The cost of employing a county engineer or contracting with the department for engineering services is paid from the county road funds of the county and is not payable from the County Aid Fund.

(E) Engineering costs on federal-aid projects may be included as a cost item of the projects;

(3) An annual program shall have been filed by the county with the Division of State Aid Road Construction and approved by the state aid engineer and in accordance with the uniform design standards and specifications set up by the state aid engineer. However, the program may be modified or revised in whole or in part by the state aid engineer, with the agreement of the county involved; and

(4) The county has complied with all rules and regulations promulgated by the state aid engineer.

**History.** Acts 1973, No. 445, § 10; A.S.A. 1947, § 76-456; Acts 2011, No. 897, § 19.

**Amendments.** The 2011 amendment substituted "a professional engineer as defined in § 17-30-101" for "a registered

professional engineer" in (2)(A) and (2)(B); and, in (2)(D), substituted "the department" for "the Arkansas State Highway and Transportation Department" and "County Aid Fund" for "County Road Aid Fund."

### **27-72-320. Advance transfers to county highway funds.**

(a)(1) Advance transfers may be made to each of the several county highway funds from time to time during the fiscal year in amounts as may be requested by the several county courts and approved by the Chief Fiscal Officer of the State.

(2) The purpose of advance transfers as herein provided includes, but is not limited to, establishing a more consistent monthly revenue accruing to each of the several county highway funds when combining county highway aid with all other sources of county highway fund revenues and providing advance transfers for the purchase of capital equipment and materials utilized in county road construction and maintenance.

(3) However, the aggregate total amount of all transfers to each of the several respective county highway funds during any calendar quarter shall not exceed twenty-five percent (25%) of the estimated total amount of county highway aid funds to be credited to the respective fund for the current fiscal year, based on the then-current official estimate of county highway fund distribution.

(4) In the event no advance transfer to the respective county highway funds is required by a respective county court, the county court shall be permitted to designate the dollar amounts and sequence of payments made to the respective county from the funds apportioned through the provisions of the State Apportionment Fund.

(b)(1) The full amount of all advance transfers made during any fiscal year under subsection (a) of this section shall be repaid during the



same fiscal year by transferring moneys in equal payments to the County Road Construction and Maintenance Revolving Fund from moneys designated as county highway aid funds for each respective county receiving advance transfers. Should any condition of circumstance arise wherein the unencumbered cash balance in each respective county highway aid fund account maintained by the Treasurer of State at the end of the fiscal year is insufficient to repay the full amount of the balance owing the County Road Construction and Maintenance Revolving Fund, then the entire unencumbered cash balance in each respective county highway fund account shall be transferred to the County Road Construction and Maintenance Revolving Fund. The balance of any amounts then owing the County Road Construction and Maintenance Revolving Fund by a respective county shall be repaid from the first moneys thereafter credited to that county as county highway aid funds from the State Apportionment Fund. There shall be no exception to this mandate.

(2) For purposes of subsection (a) of this section, the term “unencumbered cash balance” means the respective fund account balance of each of the several counties as reflected by the Treasurer of State’s records, less the amount of all warrants legally chargeable to such accounts which are, at the time, outstanding and unpaid.

(c) The interfund transfers authorized to be made under subsection (a) of this section shall be made by the Treasurer of State upon certification of the Chief Fiscal Officer of the State at the request of each of the several county courts.

(d)(1) Advance transfers pursuant to subsection (a) of this section may be made to each of the several counties as may be requested by the several county courts and approved by the Chief Fiscal Officer of the State.

(2) Advance transfer requests shall be duly recorded as county court orders in each of the respective counties requesting advance transfers and shall be filed in a manner and form prescribed by the Chief Fiscal Officer of the State.

(3) Advance transfer requests may be filed only during the thirty-day period next succeeding the date of delivery of the tax books to the county collector, the beginning of a state fiscal year, and the third Monday in November of each year.

(4) The court order shall include a certification by the county court that the official revenue estimate as provided for in § 27-72-318 has been duly filed and recorded.

(5) For each calendar year, it shall be the duty of the county court of each of the several counties requesting advance transfers under the provisions of subsection (a) of this section to prepare and file annual statements setting forth therein an estimate of the total amount of county highway revenues and general fund revenues anticipated to accrue to each respective fund during the then-current calendar year or any part thereof.

(6) These statements shall be designated and known as the official estimates of county general and county highway fund accrual, and a copy shall be recorded with the county clerk.

(7) In addition to the estimates of the total revenue amounts anticipated to accrue to each respective fund, the county court shall incorporate in each official estimate a listing of all revenue sources and the dollar amounts anticipated to accrue from each source by month of the calendar year.

(8) The listing of revenue sources shall include, but not be limited to, ad valorem tax revenues, collector's commissions, treasurer's commissions, assessor's fund, fees, court fines and costs, state aid, and federal revenue-sharing.

(9) Monthly estimates shall be based on an analysis of the three (3) annual calendar year periods next preceding the current calendar year period.

**History.** Acts 1975, No. 607, § 2; 1975 (Extended Sess., 1976), No. 1037, § 1; A.S.A. 1947, § 76-461.2; reen. Acts 1987, No. 863, § 1; 2011, No. 780, § 11.

**Amendments.** The 2011 amendment

substituted "County Road Construction and Maintenance Revolving Fund" for "Road Revolving Fund" or variant in three places in (b)(1).

### **27-72-321. Advance transfers to county special purpose road accounts.**

(a)(1) Advance transfers may be made from time to time during the fiscal year to each of the several county special purpose road accounts maintained by the Treasurer of State.

(2) Special purposes road accounts, as used in this section, shall include any and all county road construction provisions enacted by the General Assembly requiring a specified level of local, county, and cost matching funds, and shall include state aid road funds, federal-aid secondary road funds, and all other provisions of county special purpose road construction assistance which may be enacted by the General Assembly.

(3) Advance transfers may be made from time to time in such amounts as may be respectively requested by each of the several county courts.

(4) Advance transfer requests shall be duly recorded as county court orders in each of the respective counties and shall be filed in a manner and form prescribed by the Chief Fiscal Officer of the State.

(5) Requests shall be accompanied by a certified copy of all initiated contractual documentation or grant-in-aid award documentation required by the provisions of the applicable special purpose road construction assistance enacted by the General Assembly for which the advance transfer is requested.

(6) The contractual documentation or grant-in-aid award documentation shall specify the total dollar amount of the contract or award, the effective date of the contractual document, and the estimated date of termination or completion of all work specified in the contract or award.

(7) However, the aggregate amount of all advance transfers to each of the respective special purpose road construction accounts during any fiscal year shall not exceed fifty percent (50%) of the estimated total amount of county highway aid funds to be credited to each respective county for the current fiscal year, based on the then-current annual official estimate of county highway revenue distribution.

(b)(1) The full amount of all advance transfers authorized under subsection (a) of this section shall be repaid to the County Road Construction and Maintenance Revolving Fund in equal monthly installments from highway revenue moneys designated as county aid funds from the State Apportionment Fund for each of the respective counties receiving advance transfers.

(2) The repayment period may transcend one (1) or more fiscal years or one (1) or more calendar years. However, the full amount of all advance transfers authorized under subsection (a) of this section shall be repaid during the term of office of each of the respective county judges requesting such advance transfers as the county court of each of the several counties; all such transfers shall be repaid during the then-current appropriation biennium of the General Assembly.

(3) There shall be no exception to this mandate.

(c) The interfund transfers authorized to be made under subsection (a) of this section shall be made by the Treasurer of State upon certification of the Chief Fiscal Officer of the State at the request of each of the several county courts.

(d)(1) Advance transfers, pursuant to § 27-72-320(a), may be made from time to time and in such amounts as may be respectively requested by each of the several county courts.

(2) Advance transfer requests shall be duly recorded as county court orders in each of the respective counties and shall be filed in a manner and form prescribed by the Chief Fiscal Officer of the State.

**History.** Acts 1975, No. 607, § 2; 1975 (Extended Sess., 1976), No. 1037, § 1; A.S.A. 1947, § 76-461.2; reen. Acts 1987, No. 863, § 1; 2011, No. 780, § 12.

**Amendments.** The 2011 amendment substituted "County Road Construction and Maintenance Revolving Fund" for "Revolving Fund" in (b)(1).

#### SUBCHAPTER 4 — STATE AID STREETS

##### SECTION.

- 27-72-401. Definitions.
- 27-72-402. Establishment — Scope.
- 27-72-403. State Aid Division.
- 27-72-404. [Repealed.]
- 27-72-405. State aid engineer.
- 27-72-406. Eligibility for state aid — Notice.
- 27-72-407. State Aid Street Fund.
- 27-72-408 — 27-72-410. [Repealed.]
- 27-72-411. Street maintenance by municipality — Failure to maintain.

##### SECTION.

- 27-72-412. Expenses paid prior to allocation.
- 27-72-413. Allocation of state aid — State Aid Street Committee established.
- 27-72-414. Contracts for work to be performed.
- 27-72-415. Conditions for use of state aid.
- 27-72-416. Use of state aid.
- 27-72-417. Rights-of-way — Exception.
- 27-72-418. Municipal highway revenue estimates.



## SECTION.

27-72-419. Title.

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**Effective Dates.** Acts 2011, No. 1032, § 3: July 1, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that city streets are in an extreme state of disrepair, particularly in rural municipalities; that municipalities are without an adequate program or adequate funding to allow for significant, long-term, corrective action to repair their streets; and that this act is necessary to initiate a program of remediation for municipal

streets with the involvement and consent of the Arkansas State Highway and Transportation Department so that municipalities can increase the prospects of economic and social development across the state by improving their streets. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2011."

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**27-72-401. Definitions.**

As used in this subchapter:

(1) "Betterment" means any construction or reconstruction on a state aid-designated street that results in an improvement that exceeds or equals any previous improvement whether or not the previous improvement was financed in part or in whole through the provisions of this subchapter;

(2)(A) "Construction" means any proposal submitted by a municipality that meets the definition of betterment as opposed to maintenance.

(B) "Construction" includes reconstruction or improvement;

(3) "Maintenance" means any act of work that maintains the improvement in serviceable condition;

(4) "Municipality" means a city of the first class, a city of the second class, or an incorporated town;

(5)(A) "State aid" means funds to be expended on state aid streets and includes any sum or sums provided by the General Assembly to supplement funds furnished by the several municipalities for the purpose of constructing, improving, widening, straightening, surfacing, or reconstructing streets or bridges on the state aid system.

(B) "State aid" shall be available to the several municipalities in a proportion to be fixed and determined by law; and

(6)(A) "State aid streets" means the classification of municipal streets composing the major and minor arterial and collector routes feeding into local trade areas or into the state highway system that are not designated as state highways.

(B) "State aid streets" include those routes that:

(i) Are particularly essential to the conservation and development of economic and social value;

(ii) Encourage desirable land utilization; and

(iii) Have in addition one (1) or more of the following characteristics:

- (a) Extend to communities within and beyond the municipality;
  - (b) Connect with roads of major importance to municipalities or to counties;
  - (c) Connect with state highways to form a complete network of main feeder roads;
  - (d) Carry heavy volumes of traffic serving major business interests of the municipality; or
  - (e) Collect traffic at reasonable intervals from several local streets.
- (C) "State aid streets" include bridges and ferries.

**History.** Acts 1973, No. 445, Title II, § 1, as added by Acts 1975, No. 982, § 1; A.S.A. 1947, § 76-463; Acts 2011, No. 1032, § 2.

**Amendments.** The 2011 amendment rewrote the section.

### 27-72-402. Establishment — Scope.

(a) A system of state aid streets in each municipality is established to:

(1) Consist of the major and minor arterial and collector routes not on the state highway system feeding into local trade areas or into the state highway system; and

(2) Provide a program for the construction and improvement of state aid streets.

(b)(1) A state aid system of streets is established for designation by cooperative action of the state and municipalities, as classified and defined in this subchapter.

(2) This system shall be designated by the several mayors or chief executive officers of the respective municipalities with the consent and approval of the state aid engineer.

(c) This subchapter shall not be construed to deprive or diminish the powers and duties of the mayor or chief executive officer of any municipality in the exercise of his or her constitutional control over municipal streets.

**History.** Acts 1973, No. 445, Title II, § 1, as added by Acts 1975, No. 982, § 1; A.S.A. 1947, § 76-463; Acts 2011, No. 1032, § 2.

substituted "Establishment — Scope" for "Coordination with state aid road system" in the section heading; and rewrote the section.

**Amendments.** The 2011 amendment

### 27-72-403. State Aid Division.

There is created in the Arkansas State Highway and Transportation Department a division to be known as the State Aid Division, subject to the availability and appropriation of funding.

**History.** Acts 1973, No. 445, Title II, § 7, as added by Acts 1975, No. 982, § 1; A.S.A. 1947, § 76-469; Acts 2011, No. 1032, § 2.

**Amendments.** The 2011 amendment substituted "State Aid Division" for "Prohibited projects" in the section heading; and rewrote the section.

### 27-72-404. [Repealed.]

**Publisher's Notes.** This section, concerning receipt and expenditure of money, was repealed by Acts 2011, No. 1032, § 2. The section was derived from Acts 1973, No. 445, Title II, § 2, as added by Acts 1975, No. 982, § 1; 1977, No. 809, § 1; 1977 (Ex. Sess.), No. 24, § 2; 1979, No. 199, § 2; A.S.A. 1947, § 76-464.

### 27-72-405. State aid engineer.

(a) The State Aid Division of the Arkansas State Highway and Transportation Department shall be headed by a state aid engineer to be appointed by and serve at the pleasure of the State Highway Commission.

(b) The state aid engineer shall be a registered engineer with at least three (3) years' experience as a highway engineer and a thorough knowledge of municipal street problems.

(c) The state aid engineer under the direction of the commission shall:

(1) Advise the mayors and chief executive officers of the several municipalities on all matters of policy, use of funds, minimum standards for state aid streets, safeguards in accounting methods, and other related matters and cooperate with the mayors and chief executive officers on all matters connected with the layout and construction of state aid streets;

(2) Promulgate uniform and reasonable rules as he or she may deem necessary to:

(A) Effectuate a proper designation of state aid streets to be constructed in each municipality; and

(B) Develop the methods for determining priority of construction, the making of surveys, and the preparation of plans and specifications for the construction of state aid streets;

(3) Provide a uniform system of accounting in the expenditure of moneys from the State Aid Street Fund;

(4)(A) Prepare and promulgate practical uniform design standards and specifications for the construction of state aid streets.

(B) The minimum design standards and specifications may be modified or amended from time to time as the state aid engineer deems necessary; provided, however, that in any municipality with design standards as part of its adopted master street plan, any project proposed as part of the state aid streets program according to those adopted municipal design standards shall be deemed to have met the design standards for state aid streets;

(5) Advise and cooperate with the mayors and chief executive officers:

(A) In the selection and designation of the municipal streets that are to be made a part of the state aid street system, as provided for in this subchapter; and



(B) To approve or disapprove the selection of streets to be made a part of the state aid street system by the respective mayors and chief executive officers;

(6) Prepare and submit to the commission all proposed contracts to be let for the construction or reconstruction of state aid streets, but before submitting the contracts to the commission, he or she shall submit them to the mayor or chief executive officer of the municipality in which the work is to be performed so that the mayor or chief executive officer may determine that they include in all respects the work the municipality desires to be done in the municipality to be paid from state aid funds; and

(7)(A) To personally, or through his or her designated assistants, supervise and inspect all state aid street projects as the work progresses.

(B)(i) Upon final completion of any project, the state aid engineer shall cause a final inspection to be made of the project for the purpose of determining whether the project has been completed satisfactorily in accordance with the plans and specifications.

(ii) If satisfactorily completed, the state aid engineer shall approve payment of the final estimate on the project.

(C) Progress or final estimate either on a contract or a force account project shall not be paid unless approved in such manner by the state aid engineer.

(d)(1) The state aid engineer shall be subject to the direction of the commission.

(2) However, both the state aid engineer and the commission shall be bound by the provisions of this section.

**History.** Acts 1973, No. 445, Title II, § 3, as added by Acts 1975, No. 982, § 1; 1977, No. 809, § 4; A.S.A. 1947, § 76-465; Acts 2011, No. 1032, § 2.

**Amendments.** The 2011 amendment rewrote the section.

## 27-72-406. Eligibility for state aid — Notice.

(a) Before a municipality is eligible to receive benefits under this subchapter, the municipality through its mayor or chief executive officer shall agree to comply with the terms, provisions, and limitations of this subchapter.

(b)(1) When a municipality meets the requirements of this subchapter and is eligible for state aid, the state aid engineer, as soon as practicable, shall notify the eligible municipality in writing.

(2) The notice shall state that any state funds allocated to the municipality for state aid may be used for construction on the state aid system in the manner provided in this subchapter.

**History.** Acts 1973, No. 445, Title II, § 4, as added by Acts 1975, No. 982, § 1; 1977, No. 809, § 2; 1977 (1st Ex. Sess.),

No. 24, § 3; 1979, No. 199, § 3; A.S.A. 1947, § 76-466; Acts 2011, No. 1032, § 2.

**Amendments.** The 2011 amendment

substituted "Eligibility for state aid — in the section heading; and rewrote the Notice" for "Notice of municipal eligibility" section.

### 27-72-407. State Aid Street Fund.

(a) There is created in the State Treasury, subject to the availability and appropriation of funding, a fund to be known as the State Aid Street Fund, there to be used for construction, reconstruction, and improvements of the state aid street system.

(b)(1) All revenues deposited in the fund shall be apportioned to the municipalities as prescribed in § 27-72-413 for the distribution on the state aid street system among the various municipalities.

(2) The apportioned funds shall remain for a period of two (2) years from the date they are apportioned.

(3) Any unused funds shall be returned to the fund for redistribution in accordance with § 27-72-413.

(4)(A) For a municipality to receive these funds, the municipality must be matched in the ratio of ninety percent (90%) of moneys from the fund to not less than ten percent (10%) municipal matching funds for all municipalities with a population in excess of twenty-five thousand (25,000) residents.

(B) For all other municipalities, the state aid street project shall be funded at one hundred percent (100%), and all municipalities receiving moneys from the fund shall comply with the provisions of this subchapter.

**History.** Acts 1973, No. 445, Title II, § 5, as added by Acts 1975, No. 982, § 1; 1977, No. 241, § 2; 1977 (1st Ex. Sess.), No. 23, § 3; A.S.A. 1947, § 76-467; Acts 2011, No. 1032, § 2.

**Amendments.** The 2011 amendment substituted "State Aid Street Fund" for "State Aid Street Account" in the section heading; and rewrote the section.

### 27-72-408 — 27-72-410. [Repealed.]

**Publisher's Notes.** These sections, concerning apportionment and transfer of funds, prerequisite for allocations from account, and expenditure requirements, were repealed by Acts 2011, No. 1032, § 2. The sections were derived from the following sources:

27-72-408. Acts 1973, No. 445, Title II, § 6, as added by Acts 1975, No. 982, § 1; 1977, No. 809, § 3; 1977 (Ex. Sess.), No. 24, § 4; 1979, No. 199, § 4; 1981, No. 363,

§ 1; 1981, No. 522, § 1; A.S.A. 1947, § 76-468.

27-72-409. Acts 1973, No. 445, Title II, § 6, as added by Acts 1975, No. 982, § 1; 1977, No. 809, § 3; 1977 (Ex. Sess.), No. 24, § 4; 1979, No. 199, § 4; 1981, No. 363, § 1; 1981, No. 522, § 1; A.S.A. 1947, § 76-468.

27-72-410. Acts 1973, No. 445, Title II, § 8, as added by Acts 1975, No. 982, § 1; A.S.A. 1947, § 76-470.

### 27-72-411. Street maintenance by municipality — Failure to maintain.

(a) It is the duty of each municipality to properly maintain all state aid streets in that municipality after construction of any such streets with state aid moneys.

(b)(1) If, in the opinion of the state aid engineer, essential maintenance is not properly and regularly carried on, notice of the deficiency shall be given in writing to the mayor or chief executive officer.

(2) If maintenance is not initiated within sixty (60) days from date of notice, the state aid engineer may proceed to have the necessary maintenance and repair work on the street performed and charge the work to any funds in the State Aid Street Fund in the State Treasury allocated to that municipality.

(3)(A) If failure to maintain continues, the municipality is no longer eligible for state aid until proper maintenance is resumed by that municipality.

(B) Notice of withdrawal of state aid shall be duly given the Auditor of State and Treasurer of State.

(C) However, such ineligibility shall not affect payment from the fund of progress and final estimates on contracts awarded prior to notice of ineligibility.

(c) When a municipality is ineligible for state aid under the provisions of this subchapter for a continuous period of five (5) years, the municipality shall forfeit and no longer be entitled to any part of the funds in the fund later allocated to it.

**History.** Acts 1973, No. 445, Title II, § 9, as added by Acts 1975, No. 982, § 1; A.S.A. 1947, § 76-471; Acts 2011, No. 1032, § 2. **Amendments.** The 2011 amendment rewrote the section.

## **27-72-412. Expenses paid prior to allocation.**

The pro rata salaries of the state aid engineer, his or her assistants, and all other employees of the State Aid Division of the Arkansas State Highway and Transportation Department, as well as all other expenses incurred by the Arkansas State Highway and Transportation Department, shall be paid from the State Aid Street Fund in the State Treasury prior to allocation to the several municipalities.

**History.** Acts 2011, No. 1032, § 2.

## **27-72-413. Allocation of state aid — State Aid Street Committee established.**

(a) State aid streets in the several municipalities shall receive state aid in the manner and under the terms and conditions set out in this section.

(b) The state aid street system shall be allocated to the several municipalities of the state by the State Aid Street Committee.

(c)(1) The committee shall be established to select the state aid street projects for submittal to the state aid engineer for funding and construction pursuant to the provisions of this subchapter.

(2)(A) The committee shall consist of nine (9) mayors to be appointed as follows:



- (i) Three (3) mayors appointed by the Governor;
- (ii) Three (3) mayors appointed by the Speaker of the House of Representatives; and
- (iii) Three (3) mayors appointed by the President Pro Tempore of the Senate.

(B) The Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate shall each appoint at least one (1) mayor from a municipality with a population in excess of twenty-five thousand (25,000).

(3)(A) Each appointed mayor shall serve a term of four (4) years.

(B) A mayor shall be eligible to serve two (2) terms of four (4) years on the committee.

(C) However, every four (4) years a new committee shall be formed as set out in this section.

(D) Should a mayor selected for the committee leave office before the end of his or her term, the party who made the original nomination shall appoint a successor mayor to serve the remainder of the term.

(4) The committee shall select a chair by majority vote to serve a term of one (1) year.

(5) A quorum is necessary to transact the business of the committee.

(6) Subject to the availability and appropriation of funding, the committee shall begin to meet and meet at least quarterly each year.

(d) The committee may establish a formula or criteria to facilitate the identification and selection of state aid street projects, subject to the approval of the state aid engineer and consistent with the provisions of this subchapter.

(e) All state aid street projects proposed by a municipality shall meet the requirements of § 27-72-406, § 27-72-415, and § 27-72-417 of this subchapter before the committee may consider the projects for submission to the state aid engineer.

**History.** Acts 2011, No. 1032, § 2.

#### **27-72-414. Contracts for work to be performed.**

(a) All proposals covering work to be performed on state aid streets in a municipality in this state shall be:

(1) Under contract let and approved by the State Highway Commission upon a request from the mayor or chief executive officer of the municipality; and

(2) In accordance with the procedures prescribed in § 27-67-206 and other laws of this state pertaining to contracts for the construction of state highways, which shall be equally applicable to all contracts let by the commission for the construction of state aid streets under this subchapter.

(b)(1) The mayor or chief executive officer of a municipality is authorized to submit bids for work to be performed on state aid streets in his or her municipality under the provisions of this subchapter.

(2) This section shall not be construed to limit or restrict the right of a mayor or chief executive officer to submit bids for work to be performed by municipal forces in his or her municipality so long as the bids are:

(A) In accordance with procedures of § 27-67-206; and

(B) The aggregate cost does not exceed one hundred sixty-five thousand dollars (\$165,000).

**History.** Acts 2011, No. 1032, § 2.

### **27-72-415. Conditions for use of state aid.**

A municipality is entitled to receive state aid and to expend state aid moneys in conjunction with moneys furnished by the municipality on state aid streets in the municipality on projects approved for construction in the municipality provided:

(1) The state aid system in the municipality has been designated and approved as provided in this subchapter;

(2)(A) The municipality has employed or retained an engineer who is a registered professional engineer to act for and on behalf of the municipality as a whole.

(B) However:

(i) If any mayor or chief executive officer is a registered professional engineer, the mayor or chief executive officer may perform the duties provided under this section for the municipal engineer; and

(ii) A municipality may contract with the Arkansas State Highway and Transportation Department for engineering services in lieu of employing or retaining a municipal engineer.

(C) The cost of employing or retaining a municipal engineer or contracting with the department for engineering services shall be paid from the municipal street funds of the municipality and shall not be payable from the State Aid Street Fund.

(D) Engineering costs on federal-aid projects may be included as a cost item of the projects; and

(3) The municipality has complied with all rules promulgated by the state aid engineer.

**History.** Acts 2011, No. 1032, § 2.

### **27-72-416. Use of state aid.**

(a) Funds deposited in the State Aid Street Fund shall be used exclusively for the construction, reconstruction, and improvements of streets or bridges on the state aid street system, except as otherwise provided in this subchapter.

(b) The funds shall not be spent under this subchapter on any project that shall not culminate directly in a paved hard-surfaced street and the associated nonmotorized facilities that may be required by municipal design standards.

(c) The funds shall not be used for maintenance of state aid streets.

(d)(1) All expenditures from the fund under this subchapter shall be made after publication of:

(A) Notice to bidders of the date for final reception of bids; and

(B) The address at which specifications can be acquired.

(2) After a public opening of the bids, all contracts shall be awarded to the lowest responsible bidder.

**History.** Acts 2011, No. 1032, § 2.

### **27-72-417. Rights-of-way — Exception.**

(a)(1) All rights-of-way required on state aid street projects shall be acquired by the municipality.

(2) Any cost of rights-of-way or utility relocation shall not be considered a part of the cost of a project contemplated by this subchapter.

(b) The cost of reconstructing fencing and the construction of property access passages shall not be considered as rights-of-way costs but shall be considered as a component of project cost.

**History.** Acts 2011, No. 1032, § 2.

### **27-72-418. Municipal highway revenue estimates.**

(a)(1) For each fiscal year, the Chief Fiscal Officer of the State shall prepare and file quarterly statements setting forth an estimate of the total amount of highway revenues and other state revenues made available by this subchapter and all other laws providing state resources for and to municipal governments for street construction, improvements, and betterments made within the spirit of this subchapter for the express use of the several municipalities of the state.

(2) The Chief Fiscal Officer of the State shall prepare and file the statement on or before July 10, October 10, January 10, and April 10 of each fiscal year.

(b)(1) Each statement shall be designated and known as the "Official Estimate of Municipal Highway Revenues Distribution" for the then-current fiscal year.

(2) Copies shall be filed with the Chief Fiscal Officer of the State, the Auditor of State, the Treasurer of State, and the Arkansas Municipal League.

(c)(1) In preparing each official estimate of municipal highway revenues distribution, the Chief Fiscal Officer of the State shall begin with a basic amount arrived at in the manner prescribed under this subsection.

(2) The Chief Fiscal Officer of the State shall add or subtract his or her estimate of the net increase or net decrease in municipal street funds as may be affected by various factors, as determined by the Chief Fiscal Officer of the State, including without limitation:

(A) Changes in the laws pertaining to tax rates and exemptions;

(B) Administration of tax laws;

(C) Indexing; and



(D) Distribution of revenues.

(3) The basic amount of municipal street funds shall be ascertained as follows:

(A) The July estimate shall be the amount of the next-preceding fiscal year’s municipal street funds, increased or decreased by that certain percentage determined by the average of percentage changes in the amount of the total municipal street funds by legislated source category of each of the three (3) preceding fiscal years in relation to its preceding fiscal year; and

(B) The October, January, and April estimates shall be the total amount of municipal street funds by legislated source category collected in the preceding months of the then-current fiscal year plus the total amount of municipal street funds by legislated source category collected in all of the other months of the preceding fiscal year, increased or decreased by that certain percentage determined by the average of percentage changes in the collections during all other months of each of the three (3) preceding fiscal years in relation to the same other months of its preceding fiscal years.

**History.** Acts 2011, No. 1032, § 2.

**27-72-419. Title.**

This subchapter shall be known and may be cited as the “State Aid Streets Law”.

**History.** Acts 2011, No. 1032, § 2.

**CHAPTER 74**  
**HIGHWAY BEAUTIFICATION**

**SUBCHAPTER 1 — GENERAL PROVISIONS**

**27-74-101. Title.**

**CASE NOTES**

**Zoning.**

Denial of the company’s application for a permit to erect an electronic billboard was appropriate pursuant to the Arkansas Highway Beautification Act, §§ 27-74-101

to 27-74-502, because the property was not zoned commercial or industrial, § 27-74-204(a). Ark. State Highway & Transp. Dep’t v. Lamar Advantage Holding Co., 2011 Ark. 195, — S.W.3d — (2011).

**SUBCHAPTER 2 — OUTDOOR ADVERTISING — SIGNS, ETC. — IN GENERAL****27-74-204. Permitted advertising.****CASE NOTES****Zoning.**

Denial of the company's application for a permit to erect an electronic billboard was appropriate pursuant to the Arkansas Highway Beautification Act, §§ 27-74-101 to 27-74-502, because the property was

not zoned commercial or industrial under subsection (a) of this section. Ark. State Highway & Transp. Dep't v. Lamar Advantage Holding Co., 2011 Ark. 195, — S.W.3d — (2011).

**CHAPTER 76****REGIONAL MOBILITY AUTHORITY ACT****SUBCHAPTER.**

1. GENERAL PROVISIONS.
4. POWERS AND DUTIES.

**SUBCHAPTER 1 — GENERAL PROVISIONS****SECTION.**

- 27-76-103. Definitions.  
27-76-106. Immunity.

**27-76-103. Definitions.**

As used in this chapter:

(1)(A) "Bond" means a revenue bond or note issued under this chapter by a regional mobility authority created under the Regional Mobility Authority Act, § 27-76-101 et seq.

(B) "Bond" includes any other financial obligation of a regional mobility authority authorized by this chapter, the laws of this state, or the Arkansas Constitution;

(2)(A) "Compensation" means any payment for the value of the use of time or the expenditure of moneys, including without limitation:

- (i) A salary; or
- (ii) Per diem allowance.

(B) "Compensation" does not include reimbursement as provided under § 27-76-302(d);

(3) "Debt service" means the amounts necessary for paying principal, interest, trustee's and paying agent's fees, and rebate costs and the amounts necessary to establish and maintain debt service reserves as provided in the authorizing resolution or trust indenture identified under this chapter;

(4) "Governmental entity" means a lawfully created branch, department, or agency of the federal, state, or local government;

(5) "Owner" means any individual, partnership, association, corporation, or organization having any title or interest in any property,

rights, easements, and interest authorized to be acquired by and under the regional mobility authority of this chapter;

(6) "Person" means any individual, partnership, corporation, or other entity recognized by law as having power to contract;

(7) "Project development" means all phases of implementation conducted in relation to a transportation project, including without limitation:

- (A) Planning;
- (B) Environmental clearances;
- (C) Surveys;
- (D) Design;
- (E) Utility adjustments;
- (F) Right-of-way acquisition;
- (G) Construction; and
- (H) Construction inspection;

(8) "Public utility facility" means a facility that is either publicly or privately owned and that provides direct or indirect utility service to the public, including without limitation:

- (A) Sewage and water pumping stations;
- (B) Sewage and water treatment facilities;
- (C) Telephone electronic structures; and

(D) Major electrical power lines, pipelines, or substations whose major purpose is transport through a community;

(9) "Registered owner" means an owner of a motor vehicle as shown on the vehicle registration records maintained by the Office of Motor Vehicle or the analogous department or agency of another state or country;

(10)(A) "Toll facility project" means:

(i) Any new highway constructed under the provisions of this chapter by a regional mobility authority as a toll road; and

(ii) All property, rights, easements, rights-of-way, and interest that may be acquired by the regional mobility authority for or in connection with the construction or operation of a toll road.

(B) "Toll facility project" includes without limitation the following as the regional mobility authority deems necessary or desirable for the operation of a toll road:

- (i) Lands;
- (ii) Rights-of-way;
- (iii) Bridges;
- (iv) Tunnels;
- (v) Overpasses;
- (vi) Underpasses;
- (vii) Interchanges;
- (viii) Entrance plazas;
- (ix) Approaches;
- (x) Toll houses;
- (xi) Administration buildings;
- (xii) Storage buildings;



(xiii) Other buildings; and

(xiv) Facilities;

(11)(A) "Toll facility project costs" means any direct and indirect costs incurred in connection with the acquisition of rights-of-way for and constructing and equipping toll facility projects, including without limitation:

(i) The cost of the acquisition of all lands, property, rights, rights-of-way, easements, and interests acquired by a governmental entity;

(ii) The cost of demolishing or removing buildings or structures on the land so acquired;

(iii) The cost of acquiring any lands to which those buildings or structures may be moved;

(iv) The cost of all machinery and equipment;

(v) Financing charges, including interest accrued:

(a) Prior to construction;

(b) During construction; or

(c) For a period after construction;

(vi) The establishment of necessary funds and reserves;

(vii) The cost of traffic estimates, engineering fees, legal fees, plans, specifications, surveys, and estimates of cost and revenues;

(viii) Administration expense, expenditures, or any other expense that is necessary or incidental to determining the feasibility or practicability of a toll facility project; and

(ix) Cost, expenditure, or any other expense that is necessary or incidental to the construction of a toll facility project, the finance of the construction, and the placement of the toll facility project into operation.

(B) Toll facility project costs also shall include any obligation, expense, or expenditure incurred or made by the regional mobility authority for matters pertaining to a toll facility project, including without limitation:

(i) Feasibility studies;

(ii) Traffic surveys;

(iii) Borings;

(iv) Preparation of plans and specifications;

(v) Engineering services; and

(vi) Cost, expenditure, or any other expense that is regarded as part of the costs of a toll facility project and that may be reimbursed to the State Highway Commission or other agency or department of the state out of the proceeds of revenue bonds or out of any other available funds of the commission;

(12) "Toll facility project revenues" means, without limitation, any tolls, rentals, license and permit revenues, contractual receipts, gifts, grants, moneys, charges, and other funds, including federal aid highway funds, and property of whatever nature coming into the possession of or under the control of the board of directors of the regional mobility authority by virtue of this chapter, except the proceeds derived from the sale of revenue bonds issued under this chapter;

(13) “Transponder” means a device placed on or within a vehicle that is capable of transmitting or receiving information used to assess or collect tolls;

(14) “Transportation project” means:

(A) Any part of a transportation system;

(B) Construction on or of any part of a transportation system;

(C) Maintenance on or operation of any part of a transportation system; or

(D) Preservation of any part of a transportation system; and

(15) “Transportation system” means infrastructure that provides mobility for people or goods in a region, including without limitation:

(A) Roads;

(B) Streets;

(C) Highways;

(D) Bridges;

(E) Tunnels;

(F) Sidewalks;

(G) Bicycle paths;

(H) Trails;

(I) Toll facilities;

(J) Pedestrian ways;

(K) Intermodal facilities;

(L) Port authorities;

(M) Waterways;

(N) Railroads;

(O) Parking facilities;

(P) Public transit systems;

(Q) Traveler information systems;

(R) Intelligent transportation systems;

(S) Traffic management systems;

(T) Traffic signal systems;

(U) Safety improvements; or

(V) Any other means of surface or water transportation.

**History.** Acts 2007, No. 389, § 1; 2009, No. 483, § 10; 2011, No. 524, § 1. inserted present (15)(H) and (15)(M) and redesignated the remaining subdivisions accordingly.

**Amendments.** The 2011 amendment

## 27-76-106. Immunity.

(a) The powers and duties of a regional mobility authority conferred by this chapter are public and governmental functions exercised for a public purpose and for matters of public necessity.

(b) The exercise of the powers and the performance of the duties by a regional mobility authority under this chapter are immune from suit in tort unless immunity is expressly waived in writing.

(c) A regional mobility authority is not immune from suit in contract if the contract arises from the performance of duties authorized by law.

**History.** Acts 2007, No. 389, § 1; 2011, No. 524, § 3.

**Amendments.** The 2011 amendment added (c).

#### SUBCHAPTER 4 — POWERS AND DUTIES

##### SECTION.

27-76-403. Authority to contract.

##### **27-76-403. Authority to contract.**

(a) A regional mobility authority created under this chapter may enter into agreements or contracts with a governmental entity or a private entity.

(b) The types of agreements or contracts that a regional mobility authority may enter into under this chapter include without limitation:

- (1) Lease agreements;
- (2) Rental agreements;
- (3) Operating agreements;
- (4) Service agreements;
- (5) License agreements;
- (6) Promotional agreements;
- (7) Purchasing agreements; and
- (8) Public-private partnership agreements for transportation projects concerning rail, waterway, or trail.

(c) The scope of agreements or contracts that a regional mobility authority may enter into under this chapter includes without limitation:

(1) Rent, lease, or make property available for the benefit of users of a transportation project or a transportation system other than a public utility facility;

(2) Plan, design, construct, operate, or maintain a transportation project on behalf of a governmental entity within the boundaries of the regional mobility authority; and

(3) Acquire with the consent of a governmental entity or private entity a transportation project or transportation system from that entity and assume any debts, obligations, and liabilities of the entity relating to a transportation project or transportation system transferred to the regional mobility authority, provided that a regional mobility authority shall not acquire a transportation project or transportation system from another public or private entity that is completed or for which a construction notice to proceed has been issued to convert the transportation project or transportation system to a toll facility project.

(d) A regional mobility authority shall not sell a toll facility project to a private entity or enter into a lease for a toll facility or a concession agreement related to a toll facility.

**History.** Acts 2007, No. 389, § 1; 2011, No. 524, § 2.

**Amendments.** The 2011 amendment added (b)(8).



***SUBTITLE 7. WATERCOURSES AND NAVIGATION*****CHAPTER 101  
WATERCRAFT**

## SUBCHAPTER.

2. OPERATION.
3. MOTORBOAT REGISTRATION AND NUMBERING.
8. BOAT DOCK AND MARINA SAFETY.

**SUBCHAPTER 2 — OPERATION**

## SECTION.

27-101-207. Liability insurance required.

**27-101-202. Restrictions on manner of operation.****RESEARCH REFERENCES**

**ALR.** Validity, Construction, and Application of Statutes Prohibiting Boating While Intoxicated, Boating While under the Influence, or the Like. 47 A.L.R.6th 107.

**27-101-207. Liability insurance required.**

(a)(1)(A) It shall be unlawful for the owner of a motorboat of more than fifty horsepower (50 HP) or a personal watercraft to allow the operation of the motorboat or personal watercraft unless it is covered by a liability insurance policy that has been issued by an insurance company.

(B) The insurance policy must provide at least fifty thousand dollars (\$50,000) of liability coverage per occurrence.

(2) This section does not apply to a motorboat or personal watercraft owned by the United States, a state government, or any political subdivision thereof.

(b)(1)(A) Failure to present proof of liability insurance coverage if the motorboat or personal watercraft is involved in an accident creates a rebuttable presumption that the motorboat or the personal watercraft is uninsured.

(B)(i) For the purposes of this section, “proof of insurance” shall consist of a policy declaration page or other documentation which reflects the motorboat or personal watercraft coverage furnished to the insured by the insurance company which can be conveniently carried in the motorboat or personal watercraft.

(ii) Insurance companies shall not be required to provide proof of insurance which may be conveniently carried as required in subdivision (b)(1)(B)(i) of this section if the insurance coverage is provided as part of a homeowner’s insurance policy.

(2) Upon a showing that liability coverage required by this section was in effect at the time of arrest, the judge may dismiss the charge imposed under this section and the penalties shall not be imposed.

(c)(1) However, if the operator of the motorboat or personal watercraft is involved in an accident on the waters of this state and the motorboat or personal watercraft was not insured as required by this section, the owner of the motorboat or personal watercraft shall be deemed guilty of a Class A misdemeanor.

(2)(A) For a first violation of subsection (a) of this section, the penalty shall be a mandatory fine of not less than fifty dollars (\$50.00) nor more than two hundred fifty dollars (\$250).

(B) For a second offense, the penalty shall be a fine of not less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500) and the minimum fine shall be mandatory.

(C) For a third or subsequent offense, the penalty shall be a mandatory fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) or a sentence of up to one (1) year in jail or both.

(d) All fines collected under this section shall be deposited as special revenues in the State Treasury and credited to the Boating Safety Account Fund and then distributed by the Treasurer of State to the Game Protection Fund to be used by the Arkansas State Game and Fish Commission for the purpose of establishing, maintaining, and operating a program of boater training and boater safety throughout the state.

**History.** Acts 1999, No. 468, § 1; 2001, No. 1704, § 1; 2011, No. 728, §§ 1, 2.

**Amendments.** The 2011 amendment deleted “authorized to do business in this state” at the end of (a)(1)(A); redesignated the introductory language of (a)(2) and

(a)(2)(A) as present (a)(2) and deleted (a)(2)(B); and substituted “if the motorboat or personal watercraft is involved in an accident” for “when requested by a law enforcement officer” in (b)(1)(A).

### SUBCHAPTER 3 — MOTORBOAT REGISTRATION AND NUMBERING

#### SECTION.

27-101-302. Exceptions.

27-101-313. Certificate of number with beneficiary.

#### 27-101-302. Exceptions.

A motorboat shall not be required to be numbered under this subchapter if it is:

(1) Already covered by a number in full force and effect which has been awarded to it pursuant to federal law or a federally approved numbering system of another state, provided that the boat shall not have been within this state for more than ninety (90) consecutive days;

(2) A motorboat from a country other than the United States temporarily using the waters of this state;

(3) A motorboat whose owner is the United States, a state, or a subdivision thereof;

(4) A ship's lifeboat; or

(5) A newly purchased motorboat that is operated for a period not to exceed twenty (20) working days from the date of purchase, provided that the owner or operator of the motorboat has aboard the vessel the bill of sale or acceptable proof of purchase indicating the date of purchase, the name and address of the owner, and description and hull identification number of the vessel.

**History.** Acts 1959, No. 453, § 6; 1963, No. 140, § 2; A.S.A. 1947, § 21-226; Acts 1995, No. 517, § 13; 2011, No. 900, § 1.

**Amendments.** The 2011 amendment deleted former (5) and redesignated the following subdivision accordingly.

### **27-101-313. Certificate of number with beneficiary.**

(a) As used in this section:

(1)(A) "Beneficiary" means one (1) individual who is designated to become the owner of a motorboat upon the death of the current owner as indicated on the certificate of number issued under this chapter.

(B) "Beneficiary" does not include a business, firm, partnership, corporation, association, or any other legally-created entity;

(2) "Certificate of number with beneficiary" means a certificate issued for a motorboat under this chapter that indicates the present owner of the motorboat and designates a beneficiary as provided under this section;

(3) "Motorboat" means a boat registered and numbered under this chapter; and

(4)(A) "Owner" means an individual who holds the certificate of number to a motorboat and can include more than one (1) person but not more than three (3) persons.

(B) "Owner" does not include a business, firm, partnership, corporation, association, or any other legally-created entity.

(b) If the owner or joint owners want to transfer a motorboat upon death by operation of law, the owner or joint owners may request that the Revenue Division of the Department of Finance and Administration issue a certificate of number with beneficiary that includes a directive to the division to transfer the certificate of number upon the death of the owner or upon the death of all joint owners to the beneficiary named on the face of the certificate of number with beneficiary.

(c)(1) To obtain a certificate of number with beneficiary, the owner of a motorboat shall submit a transfer on death application to the division to request the issuance of a certificate of number with beneficiary or a change to a certificate of number with beneficiary.

(2) The owner shall provide the following information in the application:

(A) Whether the applicant seeks to add, remove, or change a beneficiary;

(B) The full legal name of the beneficiary;

(C) The social security number of the beneficiary;

(D) The address of the beneficiary;



- (E) The identification number of the motorboat;
- (F) The year, make, model, and length of the motorboat;
- (G) The printed full legal name of the owner of the motorboat;
- (H) The Arkansas driver's license or identification card number for the owner of the motorboat; and

(I) The signature of the owner of the motorboat.

(3) The owner shall include the following with the application:

(A) The certificate of number for the motorboat issued under this chapter;

(B) The certificate of number application fee as provided under § 27-101-306; and

(C) The certificate of number with beneficiary application fee of ten dollars (\$10.00).

(4)(A) The fee remitted under subdivision (c)(3)(C) of this section shall be deposited into the State Central Services Fund for the benefit of the division.

(B) The fee shall be credited as supplemental and in addition to all other funds as may be deposited for the benefit of the division.

(C) The fee shall not be considered or credited to the division as direct revenue.

(d) The division shall not issue a certificate of number with beneficiary to an owner of a motorboat if the owner holds his or her interest in the motorboat as a tenant in common with another person.

(e) The certificate of number with beneficiary issued by the division shall include after the name of the owner the words "transfer on death to" or the abbreviation "TOD" followed by the name of the beneficiary.

(f) During the lifetime of the sole owner or before the death of the last surviving joint owner:

(1) The signature or consent of the beneficiary is not required for any transaction relating to the motorboat for which a certificate of number with beneficiary has been issued; and

(2) The certificate of number with beneficiary is revoked by:

(A) Selling the motorboat with completion of the application for transfer of the certificate of number as provided under § 27-101-309 and transferring to another person; or

(B) Filing an application with the division to remove or change a beneficiary as provided under subsection (c) of this section.

(g) Except as provided in subsection (f) of this section, the designation of the beneficiary in a certificate of number with beneficiary shall not be changed or revoked:

(1) By will or any other instrument;

(2) Because of a change in circumstances; or

(3) In any other manner.

(h) The interest of the beneficiary in a motorboat on the death of the sole owner or on the death of the last surviving joint owner is subject to any contract of sale, assignment, or security interest to which the owner of the motorboat was subject during his or her lifetime.

(i)(1)(A) Upon the death of the owner, the division shall issue a new certificate of number for the motorboat to the surviving owner or, if no

surviving owners, to the beneficiary if the surviving owner or beneficiary presents the following:

(i) Proof of death of the owner that includes a death certificate issued by the state or a political subdivision of the state;

(ii) Surrender of the outstanding certificate of number with beneficiary; and

(iii) Application and payment of the certificate of number fee for the motorboat.

(B) A certificate of number issued under this subsection will be subject to any existing security interest.

(2) If the surviving owner or beneficiary chooses, he or she can submit a completed certificate of number with beneficiary application as provided under this section, along with the ten dollar (\$10.00) processing fee, at the time of the application for a new certificate under this subsection.

(j) The transfer of a motorboat upon the death of the owner under this section is not testamentary and is not subject to administration under Title 28.

(k) The procedures and fees under § 27-101-304(e)(2) shall apply for obtaining a duplicate certificate with beneficiary.

(l) The division may promulgate rules for the administration of this section.

**History.** Acts 2011, No. 335, § 5.

## SUBCHAPTER 8 — BOAT DOCK AND MARINA SAFETY

### SECTION.

27-101-801. Title.

27-101-802. Definitions.

27-101-803. Minimum electrical standards.

### SECTION.

27-101-804. Signage.

27-101-805. Admissibility in civil matters.

**A.C.R.C. Notes.** Acts 2011, No. 571, § 1, provided: "The General Assembly finds:

"(1) Arkansas is known for its beautiful and abundant lakes and rivers, which provide a draw for tourism and a boost for our economy;

"(2) Our lakes and rivers should be a safe place for children and families to enjoy;

"(3) There have been cases recently where children have died because the water where they were swimming was electrified by the ungrounded and improper connection of electricity to boat docks and marinas;

"(4) Electricity and water create a deadly combination that can paralyze a swimmer which can result in the swimmer drowning, and children who are swimming are particularly vulnerable to electrocution and shock in the water; and

"(5) Bringing boat docks and marinas up to the National Fire Protection Association Standards for Marinas and Boatyards and the National Electric Code is necessary for the protection and safety of all of those who enjoy our lakes and rivers for recreation and to protect our tourism industry."

**27-101-801. Title.**

This subchapter shall be known as the "Boat Dock and Marina Safety Law".

**History.** Acts 2011, No. 571, § 2.

**27-101-802. Definitions.**

As used in this subchapter:

(1) "Boat dock" means a man-made structure that:

(A) Protrudes into a body of water for the purpose of mooring a boat or for other water-related recreation; and

(B) Is connected to an electric power source in any way; and

(2) "Marina" means a dock or basin that:

(A) Provides moorings for motorboats and offers supply, repair, or other services for remuneration; and

(B) Is connected to an electric power source in any way.

**History.** Acts 2011, No. 571, § 2.

**27-101-803. Minimum electrical standards.**

The owner and operator of a boat dock or marina in the state shall install and maintain electrical wiring in accordance with NFPA 303, the National Fire Protection Association Standard for Marinas and Boat-yards, and NFPA 70, the National Electric Code, to prevent shock, electrocution, or injury to users of the facility and swimmers in the surrounding area.

**History.** Acts 2011, No. 571, § 2.

**27-101-804. Signage.**

(a) Each boat dock and marina in the state that is not located on a federal impoundment owned or managed by the United States Army Corps of Engineers shall have signage that warns of electric shock hazards in the waters surrounding the boat dock or marina and the risk of swimming in the area as provided under this section.

(b) The signage under this section shall be placed to give adequate notice to persons using the boat dock or marina or swimming near the boat dock or marina of the electric shock hazard risks of the waters around the boat dock or marina.

(c) The signage shall state:

(1) "ELECTRIC SHOCK HAZARD RISK: SWIM AT YOUR OWN RISK" on one (1) sign; or

(2) "WARNING: ELECTRIC SHOCK HAZARD" on one (1) sign and have another sign attached that states "SWIM AT YOUR OWN RISK".

**History.** Acts 2011, No. 571, § 2.



**27-101-805. Admissibility in civil matters.**

The violation of this subchapter is admissible in a civil action against the owner or operator of a boat dock or marina if the violation results in bodily injury to or the death of a person.

**History.** Acts 2011, No. 571, § 2.

***SUBTITLE 8. AERONAUTICS*****CHAPTER 116****REGULATION OF AIRCRAFT****SUBCHAPTER.****4. DOWNED AIRCRAFT DEVICES.****SUBCHAPTER 4 — DOWNED AIRCRAFT DEVICES****SECTION.****27-116-401. Administration.****27-116-401. Administration.**

The provisions of this subchapter shall be administered by the Arkansas Department of Aeronautics.

**History.** Acts 1971, No. 52, § 2; A.S.A. 1947, § 74-126; Acts 2011, No. 780, § 13.

**Amendments.** The 2011 amendment substituted “Arkansas Department of

Aeronautics” for “Arkansas Aeronautics Commission through the Arkansas Department of Aeronautics, hereafter referred to as the ‘department’.”







